

INTELLIGENCE ACTIVITIES
SENATE RESOLUTION 21

HEARINGS
BEFORE THE
SELECT COMMITTEE TO STUDY
GOVERNMENTAL OPERATIONS WITH
RESPECT TO INTELLIGENCE ACTIVITIES
OF THE
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
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MAIL OPENING

OCTOBER 21, 22, AND 24, 1975



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INTELLIGENCE ACTIVITIES—MAIL OPENING

TUESDAY, OCTOBER 21, 1975

U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Tower, Huddleston, Morgan, Hart of Colorado, Goldwater, and Schweiker.

Also present: William G. Miller, staff director; Frederick A. O. Schwarz, Jr., chief counsel; and Curtis R. Smothers, counsel to the minority.

The CHAIRMAN. The hearing will please come to order.

Today, and through the rest of this week, we wish to resume our inquiry into the question of why the Federal Government has been opening the mail of American citizens for over two decades. It is a policy fundamentally at odds with freedom of expression and contrary to the laws of the land. This committee has already reviewed in public some details of the CIA mail openings while we were considering the Huston plan.

One provision of that plan was a recommendation to institute a mail opening program, though, ironically, intelligence officers were already busily unsealing envelopes in various parts of the country and had been doing so for years.

We are less concerned this week with the emphasis of the mail programs than with the workings of the institutions that allowed them to take root and flourish, even though they violated the laws of the land. How did this mail policy begin? Who in the CIA, the FBI, the White House, the Justice Department, and the Post Office knew about it? What reviews were made of the policies as the leadership changed within these institutions?

Though mail is the subject of this week's hearings, what interests us most are the reasons the Agency used to justify this violation of civil liberties. The question of mail openings, then, will be only the medium through which we probe in depth the way our intelligence services function.

As a case study, mail opening reveals the most revealing look of the inner life of the CIA and the FBI. In the instance of the CIA, with which we begin our examination today, the evidence suggests their mail program was allowed to continue despite the harshest criticism of it from investigators within the CIA Inspector General's

Office, and despite the fact that it was not very productive in terms of intelligence information.

Moreover, throughout the 20-year period, many senior Government officials were not told of the mail openings or were misinformed about them. These are serious charges which have arisen in our research into the mail opening program of the CIA and the FBI. We are here today to explore the decisionmaking process within the CIA, to ascertain how valid these public allegations are.

To assist us in our search for understanding and for ways to improve the Government, we have appearing before the committee this morning Mr. Gordon Stewart, Mr. John Glennon, and Mr. Thomas Abernathy, all of whom served in the CIA Inspector General's Office, which investigated mail opening programs in the sixties, and Howard Osborn, who will appear after these three gentlemen, who was the CIA Director of the Office of Security from 1964 to 1974.

Before I swear the witnesses, I would like to ask Senator Tower for opening remarks that he would like to make at this time.

SENATOR TOWER. Thank you, Mr. Chairman.

Let me begin with an endorsement of the chairman's statement that the primary value of these open sessions on mail opening is the opportunity to gain the insights which can only come from an in-depth case study.

There never has been any serious question regarding the legality of indiscriminate mail openings. Most of those associated with these invasions of privacy have flatly acknowledged the illegality of their actions. The closest we have come to justification for these mail openings is that they proved to be an invaluable source of national security information.

Even assuming the need for such information—and I do not believe that the U.S. Postal Service should be an inviolate haven for those who would destroy our liberties—the real question is whether critical judgments regarding the necessity of investigative efforts and the extent of those efforts, can be effectively controlled in the future to keep invasion of any person's privacy within constitutionally mandated limits.

The fault here goes beyond the CIA. It must be shared by an FBI which was fascinated by the potential fruits of such efforts, a Postal Service which either willingly or unwillingly allowed it to happen, and leaders in the executive branch who simply were not in control of these insidious encroachments upon the liberties of American citizens.

Let me emphasize again that legislation looks to the future. Rather than agonize on the question of fault, a question on which there has already been considerable public discussion, we must fashion recommendations which will close the door on the opportunity for this kind of inexcusable, even if well-meaning, disregard of fundamental liberties.

It is my hope that the candor of the witnesses in these hearings will not only provide some insights into the mentality of those who implemented these efforts, but also a genuine appreciation for the nature of a bureaucracy which allowed it to go unchecked.

The value of public hearings on these issues is that we will hopefully provide recommendations which go beyond changes in the formal

rules and organization charts. If our efforts are to have lasting value in the protection of the liberties of our citizens, persons charged with the defense of the national security in the future must go about their tasks with an ingrained sense of the critical balance between protection of freedom and the sanctity of individual liberty in our society.

The issue is not a new one. The framers of the Constitution incorporated fourth amendment guarantees only after an exhaustive public debate. It is both necessary and proper on the eve of the 200th birthday of the United States of America that we engage in similar reevaluations to determine what reforms will be needed to keep these vital principles alive.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tower.

Now, gentlemen, please stand to be sworn.

Would you raise your right hands?

Do you solemnly swear that all of the testimony you will give in these proceedings will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STEWART. I do.

Mr. ABERNATHY. I do.

Mr. GLENNON. I do.

The CHAIRMAN. Mr. Schwarz, would you commence the questioning.

Mr. SCHWARZ. Would each of the witnesses please identify himself.

Mr. ABERNATHY. Thomas Abernathy.

Mr. STEWART. Gordon Stewart.

Mr. GLENNON. John Glennon.

Mr. SCHWARZ. Are any of you gentlemen accompanied by counsel?

Mr. STEWART. I am.

Mr. ABERNATHY. I am.

Mr. SCHWARZ. Could counsel identify himself?

Mr. GAINES. Stanley Gaines.

Mr. ROGOVIN. Mitchell Rogovin.

Mr. SCHWARZ. And do you each represent all three witnesses?

Mr. GAINES. I represent Mr. Stewart.

Mr. ROGOVIN. I represent Mr. Abernathy.

Mr. SCHWARZ. You three gentlemen had nothing to do, yourselves, with opening any mail—is that right? Your connection with the subject is your involvement with the Inspector General's Office?

**TESTIMONY OF GORDON STEWART, FORMER INSPECTOR GENERAL,
CIA, ACCOMPANIED BY STANLEY GAINES, COUNSEL; TESTI-
MONY OF THOMAS ABERNATHY, FORMER STAFF MEMBER, IN-
SPECTOR GENERAL'S STAFF, CIA, ACCOMPANIED BY MITCHELL
ROGOVIN, COUNSEL; TESTIMONY OF JOHN GLENNON, FORMER
STAFF MEMBER, INSPECTOR GENERAL'S STAFF, CIA**

Mr. GLENNON. That is correct.

Mr. ABERNATHY. That is correct.

Mr. STEWART. That is correct.

Mr. SCHWARZ. Mr. Abernathy, I am going to start with you, because you did a survey in 1963; and then I am going to go to Mr. Stewart and Mr. Glennon, who did the second survey in 1969.

Were you in the Inspector General's Office in 1960?

Mr. ABERNATHY. I was.

Mr. SCHWARZ. And did you do something in connection with the Office of Security at that time?

Mr. ABERNATHY. I participated in an Inspector General's survey of the Office of Security in 1960.

Mr. SCHWARZ. And in connection with that survey, did you look at a mail opening project?

Mr. ABERNATHY. I did.

Mr. SCHWARZ. Fine. Where did you go? Who did you talk to? Describe generally the process followed by the Inspector General's Office.

Mr. ABERNATHY. The discussions were conducted in New York City, in the office maintained there by the Office of Security. During the survey, we talked to all of the people who were involved in the project and who were available at that time.

Mr. SCHWARZ. And did you talk to anybody who used the material obtained from the project?

Mr. ABERNATHY. I don't recall any such conversation.

Mr. SCHWARZ. Now, what were your general conclusions about the project? First, did you form a conclusion as to whether or not the opening of mail was legal?

Mr. ABERNATHY. No, we never discussed whether it was technically legal or illegal.

Mr. SCHWARZ. Did you have an impression that it was illegal?

Mr. ABERNATHY. It was clearly apparent that there were very serious questions of public interest involved.

Mr. SCHWARZ. And when you say serious questions of public interest involved, that is a way of saying there were serious questions about the legality of the project, is that right?

Mr. ABERNATHY. Yes.

Mr. SCHWARZ. Exhibit 1¹ is a study done in 1960. Mr. Abernathy, do you also have the Inspector General's Survey of the Office of Security Annex in front of you?

Mr. ABERNATHY. I do.

Mr. SCHWARZ. All right. Would you read from it into the record your conclusions with respect to the value of the project, as you saw it in 1960?

Mr. ABERNATHY.

The SR Division is the project's largest customer in the Agency. Information from the CI Staff flows to the SR Support Branch and from there to the operational branches. It may include * * * items of interest on conditions inside the country.

In our interviews, we received the impression that few of the operational leads have ever been converted into operations, and that no tangible operational benefits had accrued to SR Division as a result of this project. We have noted elsewhere that the project should be carefully evaluated and the value of the product to SR Division should be one of the primary considerations.

Mr. SCHWARZ. All right. Now, in making your recommendations, did you make any recommendation based upon the language that you just read into the record, that as far as you could see, no tangible operational benefits had accrued to the SR Division?

Mr. ABERNATHY. One of the two recommendations in the report was that there be a thorough evaluation of the project.

¹ See p. 175.

Mr. SCHWARZ. Incidentally, SR Division stands for what?

Mr. ABERNATHY. Soviet Union Division.

Mr. SCHWARZ. So you were saying no tangible operational benefits had accrued to the Soviet Division of the CIA?

Mr. ABERNATHY. I think that I need to qualify that. We also pointed out in this report that we did not extend the survey into the operational components who were the primary customers.

Mr. SCHWARZ. But as far as you were able to determine, there had been no such benefits?

Mr. ABERNATHY. That is correct.

Mr. SCHWARZ. And you made, as one of your two recommendations a suggestion that an evaluation be made of the worth, the usefulness of the project?

Mr. ABERNATHY. That is correct.

Mr. SCHWARZ. And that was made in 1960?

Mr. ABERNATHY. I think the report was actually submitted in February 1961.

Mr. SCHWARZ. After working in 1960?

Mr. ABERNATHY. Yes.

Mr. SCHWARZ. Did you make another recommendation in connection with this project?

Mr. ABERNATHY. The second recommendation was that the Agency should be prepared to explain the project, if it should ever become public knowledge.

Mr. SCHWARZ. Now, would you characterize that as a cover story? Did you?

Mr. ABERNATHY. That is correct.

Mr. SCHWARZ. What did you mean by a cover story?

Mr. ABERNATHY. Plausible explanation for what was happening.

Mr. SCHWARZ. You mean, a misexplanation?

Mr. ABERNATHY. In this particular case.

Mr. SCHWARZ. All right. So it was a general understanding, as you testified earlier, that there were serious public problems, or as you then agreed with me, serious problems of legality, right?

Mr. ABERNATHY. That is correct.

Mr. SCHWARZ. But your recommendation was simply that a cover story be prepared; is that right?

Mr. ABERNATHY. That second recommendation addressed itself only to the cover story; that is correct.

Mr. SCHWARZ. All right. You did not recommend that the project be turned off.

Mr. ABERNATHY. No.

Mr. SCHWARZ. All right. Now, Mr. Stewart and Mr. Glennon, when did you do a second review of the mail opening project?

Mr. STEWART. In 1969.

Mr. SCHWARZ. And how was that done? Mr. Stewart, you were the actual Inspector General, is that right?

Mr. STEWART. That is correct.

Mr. SCHWARZ. And was Mr. Glennon on your staff?

Mr. STEWART. He was the head of a team, composed, I think, of three men, who conducted the inspection of the counterintelligence staff, including this project.

Mr. SCHWARZ. All right. We shall start with Mr. Glennon then. Mr. Glennon, if you could briefly describe what you did and what you concluded, and then we will turn to you again, Mr. Stewart.

Mr. GLENNON. With relation to just this mail project, in the course of our survey of the counterintelligence staff we came across this mail opening project conducted in New York. The team of three members was quite surprised to find such an activity going on.

Mr. SCHWARZ. You had not known about it in advance?

Mr. GLENNON. No; I had not. And we interviewed all members of that section. We interviewed all of the customers—well, not all of the customers, but most of the customers who got the take from the mail openings, including the liaison officer from the FBI.

Then we recommended that it be terminated, because we were aware, ourselves, that it was illegal. We thought that the take was not sufficient to warrant such a continuation, and that obviously, it would get the Agency into a very embarrassing position.

Mr. SCHWARZ. All right. I want to come back to your recommendations on the legality point; but to focus with you for a moment on your conclusions with respect to the worth or lack of worth of the program, how did you go about analyzing that subject? And would you state in somewhat more detail your conclusions?

Mr. GLENNON. The project members kept a list of all of those people who were cleared to receive the take from the opening of the mail; and of course, that list went back for a number of years. In that list, they had the names of current members of the other operational units in the Agency. We took those names and went to interview those people and asked what use they were getting out of the take.

Mr. SCHWARZ. And what did they say to you?

Mr. GLENNON. Well, we found that there was very little use being made of it, except by the Bureau.

Mr. SCHWARZ. Except by the FBI?

Mr. GLENNON. Right.

Mr. SCHWARZ. All right. Now, I will just read into the record from the ultimate report that you, I think, Mr. Stewart, prepared the following quotation:

Most of the offices we spoke to find it occasionally helpful, but there is no recent evidence of it having provided significant leads or information which have had positive operational results. The Office of Security has found the material to be of very little value. The positive intelligence derived from this source is meager.

Now, that is Mr. Stewart's summarization of your investigation, Mr. Glennon. But does it accurately summarize your investigation?

Mr. GLENNON. Well, it's joint. We get together after the survey is completed. The inspectors sit down with the Inspector General and write the report in the final form. So that this was—

Mr. SCHWARZ. It was an accurate reflection of what you found in your investigation.

Mr. GLENNON. I would argue there was a little bit less use being made of it in most offices.

Mr. SCHWARZ. In other words, you would make the criticism of its value even more critical than the language I just read?

Mr. GLENNON. I would.

Mr. SCHWARZ. You would?

Mr. GLENNON. I would.

Mr. SCHWARZ. All right. Now, on the subject of legality, did you make a recommendation that the project be terminated because it was illegal?

Mr. GLENNON. No, we did not mention the illegality of it, because we assumed that everyone realized it was illegal. The very point that we were trying to make was the Agency would be in deep embarrassment if they were caught in this activity, unless it was legal, so we just assumed everyone realized it was illegal.

Mr. SCHWARZ. All right. Let me turn now to you, Mr. Stewart. Is it correct, do you agree, that everyone assumed it was illegal?

Mr. STEWART. Yes, certainly. Those who were in on the project, from my understanding, knew that it was illegal.

Mr. SCHWARZ. To whom did you report in 1969?

Mr. STEWART. Officially, I reported to the Director of Central Intelligence. On a day-to-day basis, I reported to the Executive Director, Col. Lawrence K. White.

Mr. SCHWARZ. Now, on this particular subject, did you report, in fact, to Director Helms?

Mr. STEWART. I provided Mr. Helms with a 15- or 20-minute briefing on the whole Counterintelligence Staff survey and in that briefing I, as best I remember, did cover this project.

Mr. SCHWARZ. And in that covering of this project, was it your understanding that Director Helms also knew that it was illegal?

Mr. STEWART. Yes. It was my understanding, and although I cannot swear that he did know, I didn't ask him.

Mr. SCHWARZ. But it was the general understanding of everybody that this was obviously illegal; is that right?

Mr. STEWART. That was certainly my understanding.

Mr. SCHWARZ. Now, in light of that, what did you recommend?

Mr. STEWART. We recommended that the project be turned over to the FBI, since, as far as we knew, they had the primary interest in the take from the project. If the FBI were not to accept it, we recommended that the Agency consider closing the project.

Mr. SCHWARZ. That is kind of a curious recommendation to make, isn't it? That you conclude it's illegal, and then you decide it ought to be turned over to the FBI, which has responsibility for enforcing the law. What is the logic in that? Can you explain that?

Mr. STEWART. The FBI was very much interested in the take of the project, and as Mr. Glennon reported, and I put in our report, that the Bureau had, in fact, run a similar project themselves. So I did not know whether they would be at all interested in taking it, but I thought that, under the circumstances, and since they were interested, before we simply summarily closed the project, we should at least take it up with them.

Mr. GLENNON. May I say something at that point? I did talk to the liaison officer with the FBI.

Mr. SCHWARZ. Someone from the FBI?

Mr. GLENNON. That is right, and he gave me a flat statement that the Bureau would not be interested in picking this up, so our recommendation actually amounted there to a recommendation that it be abandoned.

Mr. SCHWARZ. Now, that is interesting, because, in fact, it was not abandoned for 4 years, was it?

Mr. GLENNON. I don't know.

Mr. SCHWARZ. Do you have any knowledge of that, Mr. Stewart?

Mr. STEWART. I have learned since coming down here to give a deposition that it was carried on for several years after we made our recommendation.

Mr. SCHWARZ. All right. Just one final question. In your meeting with Mr. Helms, how did you understand he was going to proceed, after you made your recommendations to him?

Mr. STEWART. I simply assumed that he would follow the usual format; in other words, he received the briefing as a matter of information. I would have assumed that the action officer, Mr. Karamessines, would, in due time, take up with him his proposed action with regard to our recommendation. The recommendation was addressed to the Chief of the Clandestine Service, Mr. Karamessines.

Mr. SCHWARZ. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. Mr. Smothers, do you have questions?

Mr. SMOTHERS. To clarify the point that I believe the chief counsel has been raising, if we look back to Mr. Abernathy's report [exhibit 1¹] we see there at page 10, paragraph 16, essentially the conclusion that coordination of the project within the Agency was out of hand. Would that be a correct characterization, Mr. Abernathy?

Mr. ABERNATHY. I am not sure. I would say it was out of hand, but the various components who had an interest operated in their own areas without a great deal of intercourse with each other.

Mr. SMOTHERS. Your recommendations, then, called for an evaluation to follow your own study of that. To the best of your knowledge, was that undertaken?

Mr. ABERNATHY. I believe there was a memorandum dated the end of 1962, which does indicate that such an evaluation was undertaken by the Office of Security and the CI staff. But I was not personally privy to that evaluation.

Mr. SMOTHERS. Mr. Glennon, when you conducted your inquiry in 1969, did you find any indication that the problems raised regarding coordination and liaison has been dealt with effectively?

Mr. GLENNON. I don't recall, really. All I know is, as the project continued, we made another evaluation ourselves of the use of it.

Mr. SMOTHERS. Do you recall your assessment regarding the degree of control within the Agency in 1969?

Mr. GLENNON. The degree of control on my project?

Mr. SMOTHERS. Yes.

Mr. GLENNON. I think the control of the project was in the hands of the Counterintelligence Staff; that it was not formalized as a project, which was subjected to the review of the proper officials. So in that case, it just went on year after year without, I guess, a budget review, an authorization review on the part of the program staff or Mr. Karamessines.

Mr. STEWART. I would like to say something on that. We recommended, of course, that there be established a procedure which would assure regular and periodic control and review of the project. We also recommended that the man in charge be relieved, and that a better qualified person be placed in charge of the project. I think that be-speaks some question about the effectiveness of control as we witnessed it during our survey.

¹ See p. 175.

Mr. SMOTHERS. Would it be fair, then, Mr. Stewart, to say that it was your conclusion that the project was not only being poorly controlled, but indeed, that it was producing only marginal value in terms of the information received?

Mr. STEWART. I would say yes to both points, yes.

Mr. SMOTHERS. Can you then give us—if not directly, at least your impression—of the response of Agency officials to these kinds of recommendations by you? Essentially, what you seem to be saying is it is out of control, it is worthless to us, we ought to drop it. What kind of response did you get to that?

Mr. STEWART. I cannot be very helpful on that, because the Inspector General's Office is not an office that follows up and makes sure the recommendations are followed. That responsibility rests with the Executive Director, or did at that time. His office kept a particular file on the recommendations that were made on this, and all other surveys that we drew up.

We got into these responses only when they were received by the Executive Director, who would then refer them back to the Inspector General's staff for further comment. In this case, I simply do not recall what, if any, response we got to these recommendations.

Mr. SMOTHERS. One final question. There seems to be some concern here for both your efforts and, at one point in time, the parallel efforts of the FBI in the mail-opening area. Do you believe that the continuation of this project was in any way needed or motivated by the sense of competition between your agency, the CIA, and the FBI?

Mr. STEWART. I would have said the opposite. I had the impression at the time that we were conducting the operation, and we surveyed it, that we were very much motivated by a desire to make sure that the FBI got good information of a counterintelligence nature bearing on internal security matters in the United States.

Mr. SMOTHERS. So you were essentially trying to help the FBI, and after you concluded that the take was not important to the CIA, your position was that if the FBI wanted the information, they should do it themselves?

Mr. STEWART. That's right.

Mr. SMOTHERS. Thank you. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. We will turn first to Senator Hart of Colorado.

Senator HART of Colorado. Thank you, Mr. Chairman.

Mr. Abernathy, in the Inspector General's Survey of the Office of Security in 1960 [exhibit 1¹], there is reference to the "overall potential of the New York mail operation." And that paragraph states as follows:

It is improbable that anyone inside Russia would wittingly send or receive mail containing anything of obvious intelligence or political significance. It should also be assumed that Russian tradecraft is as good as our own and that Russian agents communicating with their headquarters would have more secure channels than the open mails.

In that connection, do you have any reason to change your assessment of the potential evaluation of mail openings today?

Mr. ABERNATHY. No, sir. I've had no contact with it up until today.

Senator HART of Colorado. But with your experience and judgment, would that still be essentially your assessment of the situation?

¹ See p. 175.

Mr. ABERNATHY. I'm not sure I would be in a position to make such an assessment to date, but I do not have any information that would cause me to change my view.

Senator HART of Colorado. Therefore, you would still believe, as you apparently did then, that there would be little intelligence or political significance contained in the mail?

Mr. ABERNATHY. Again, I'm not sure that I have all of the facts available that would enable me to make such a conclusion. But on the basis of the information I do have, I would say that my views would be the same.

Senator HART of Colorado. Following that statement, the report went on to say that:

On the other hand, many seemingly innocent statements can have intelligence significance. Comments concerning prices, crop conditions, the weather, travel plans, or general living conditions can be important.

In this regard, do you believe that these "innocent statements" justify the opening of mail illegally?

Mr. ABERNATHY. No, sir. I cannot say I believe that.

Senator HART of Colorado. And if these "innocent statements" on crop conditions, the weather, and general living conditions are important for us to know, do you not believe this information could be collected through overt rather than covert means?

Mr. ABERNATHY. Certainly. That is true.

Senator HART of Colorado. Most of this kind of information could be collected overtly?

Mr. ABERNATHY. Yes.

Senator HART of Colorado. In the same Inspector General's Survey of the Office of Security, that same document we are referring to, there is reference in paragraph 6, on pages 3 and 4, to the random selection of letters to be opened. That paragraph states as follows:

Of the total items opened, about one-third are on the watch list and the others are selected at random. Over the years, however, the interceptors have developed a sixth sense or intuition, and many of the names on the watch list were placed there as a result of interest created by the random openings.

Could you describe briefly for this committee your understanding of this "sixth sense or intuition?"

Mr. ABERNATHY. Well, when someone does something for a number of years, he begins to develop a feel for it. In this particular case, perhaps the addressees' mail address to Soviet officials perhaps would have been of more interest. I'm sorry that I don't have the recall necessary to go back 15 years to bring up facts that might have been available to me then, but it is purely intuition as I see it.

Senator HARR of Colorado. And these individuals who developed this uncanny ability can scan envelopes, or the exteriors of pieces of mail, and somehow through these vibrations or instincts determine that there may be something there, and therefore open them? If their instincts are wrong, of course, they have invaded somebody's privacy, as they did in any case; but it is the random nature of the operation that I think interests us here.

Mr. ABERNATHY. Yes, sir.

Senator HART of Colorado. Was this intuition based on sound counterintelligence judgment, like that of the CIA inspectors, or on their own personal dislikes of individuals or organizations?

Mr. ABERNATHY. I do not think that their personal likes or dislikes entered into it. I think it was purely random, the selection of the mail, except for those on the watch list, and I am not sure that they had any particular means of specifically identifying documents they were looking for.

Senator HART of Colorado. So 15 years later, you cannot sharpen for us the kind of elements that went into this sixth sense?

Mr. ABERNATHY. That is correct.

Senator HART of Colorado. Mr. Stewart, I would like to ask you, as former Inspector General, a couple of questions in this regard. In your interview by the staff, you mentioned that despite your understanding that the mail project was illegal, you never took this matter to the CIA General Counsel, Mr. Huston. Could you explain to us why you never did that?

Mr. STEWART. I can merely say that I did not at that time feel it was necessary to explore it with him. I didn't think that the question of its legality was that tricky.

Senator HART of Colorado. In other words, if it is a matter that is clearly illegal, you do not have to consult the General Counsel?

Mr. STEWART. Well, in drawing up my report for the Director, I did not feel I needed to.

Senator HART of Colorado. You only consult the General Counsel when it is a marginal question? In other words, if it might be illegal?

Mr. STEWART. I can give you an illustration of that. I did consult the General Counsel on a matter having to do with the CIA's responsibilities in the general field of arms control at one time. This was to get an interpretation of the 1947 Act which he gave very handily, and I didn't feel that this was that kind of a question.

Senator HART of Colorado. Do you know if the General Counsel was ever informed of the existence of the mail opening projects?

Mr. STEWART. Well, I was told by Mr. Paul Wallach of your staff that he was not so informed.

Senator HART of Colorado. But you had no information during the time?

Mr. STEWART. I had no information at the time.

Senator HART of Colorado. Do you know from your information, either at the time or since then, whether information on the mail projects was deliberately held back from the General Counsel?

Mr. STEWART. No; I really don't know the answer to that question.

Senator HART of Colorado. In a general policy or organizational sense, could you describe for us the relationship within the CIA between the Inspector General and the General Counsel?

Mr. STEWART. We were both staff members under the Director. He, of course, with his set of responsibilities, and the Inspector General with another set of responsibilities; we worked together on matters that called for, let us say, investigation and also legal judgment. In other matters, we rarely consulted him where there was no need to do so.

Senator HART of Colorado. Are there, within the CIA, formal procedures by which the Inspector General reports to the General Counsel any questionable activities that he may run across?

Mr. STEWART. I should say only conflict of interest comes to mind. He certainly is in on that whole aspect, but I don't recall any other case

where I would be called upon to report to him. And I should say on an operation, particularly a very closely held one, I would have authorization to expand the number of people briefed on the operation before I did so.

Senator HART of Colorado. But on other judgments and other matters, it is pretty much an ad hoc judgment if things are to be referred to him?

Mr. STEWART. Yes. For example, personnel matters; if there were illegal aspects of some action taken in the Agency with regard to an individual who had then placed a grievance before us, we naturally would go to the General Counsel on a matter of that sort.

Senator HART of Colorado. A minute ago, Mr. Stewart, I asked if you had any information about whether the mail opening projects had been purposely withheld from the General Counsel, and I think your indication was that you thought it had not been. It has been called to my attention that in your interview with the staff in response to this specific question, you said, "well, I am sure that it was held back from him on purpose."

Mr. STEWART. I had in mind there the procedure that we had on any closely-held project; that is, to name the people who were authorized to know about it. You can interpret the absence of his name from that list as a positive decision not to let him know about it. You can also interpret it as a decision that there was no particular requirement that he know about it.

Senator HART of Colorado. What would have been the response of the policymakers in the CIA if this matter had come to his attention as the General Counsel? And if he had clearly stated, either orally or in writing, that it was illegal, would the project have continued?

Mr. STEWART. I really don't know. That is simply a matter of guess-work.

Senator HART of Colorado. Has that kind of situation ever arisen in the CIA, in your experience?

Mr. STEWART. Not directly in my experience, and I really would have a hard time thinking of an operation that had been dropped because of such objections.

Senator HART of Colorado. Based on your experience, do you think this is one of the dangers of compartmentation that the committee has run into on a number of occasions, where the so-called "need-to-know" has been a device to avoid directly confronting questions of legality? Where the question of legality arises, you merely bypass the office that has the responsibility for raising the question of legality and therefore, it never has to surface or be confronted by the policymaker.

Mr. STEWART. Well, I have a hard time believing that the question of legality was not confronted in this matter. I feel that those responsible for the operation understood its status as something outside of the law; that they had determined that it was necessary to go ahead with the project despite that, and had sought such clearances as they thought necessary at the time. So I do not feel that the question of legality was actually swept under the rug, simply because you do not include the General Counsel in on those who are briefed on it.

Mr. Karamessines, of course, had legal training and practiced law, so he is not entirely unknowledgeable in the law. And certainly Mr. Helms, I should say, is a highly intelligent man, and also understood what the project was up to.

Senator HART of Colorado. Well, that is considerably different from the officer in the Agency charged with the duty of rendering legal opinion.

Mr. STEWART. You are quite right.

The CHAIRMAN. Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman. Mr. Stewart, the two Inspector General surveys, which have dealt in part with the mail problems, provide our committee with a chance to examine the internal workings of the CIA. Would you tell the committee how many people were working in the IG's office when you were Inspector General?

Mr. STEWART. Oh, I think about a dozen staff members. And then, we had secretarial help.

Senator SCHWEIKER. Do you know how many people are working in the IG's office now? Would you be surprised to know that by 1973, your dozen had dropped to about half a dozen in the midst of some very serious accusations and charges about the CIA?

Mr. STEWART. Yes, I heard about that, and I was surprised that they had cut it back.

Senator SCHWEIKER. Did you feel, with 12 people, you had the staff to do the IG's job as you envisioned it?

Mr. STEWART. Sir, any job is almost limitless, and I could easily have managed more people on the staff. But I felt that we were able to cover the essentials with the team that we had at the time, and in the frame of reference we had at that time.

I think I explained, in my deposition, that we were aiming toward a review of each entity in the Agency on about a 5-year basis. More frequent inspections, I think, would be counterproductive. Less frequent, I think, really would show a weakness.

Senator SCHWEIKER. As a matter of routine, did your IG reports go to anyone outside the Agency?

Mr. STEWART. No, sir.

Senator SCHWEIKER. In other words, the President or the White House never received a copy unless specifically the Director of CIA might pass on such a copy of his decision?

Mr. STEWART. Not to my knowledge.

Senator SCHWEIKER. And did the oversight committees of the Congress, to your knowledge, ever receive, on a routine basis, any Inspector General reports?

Mr. STEWART. They did not.

Senator SCHWEIKER. Would you not think, in strengthening the Inspector General's office and position and role in the CIA, that the flow of information on a regular basis, both to the White House and to the responsible oversight committee of Congress, would be a very essential element?

Mr. STEWART. Well, I have read of such a proposal recently, and it has given me a great deal to think about. It would certainly, in a way, strengthen the Inspector General's role. I do not doubt that at all. It would also, I think, change his role very significantly within the Agency. There is a great deal of difference between going to an entity in the Agency saying, we come here on behalf of the Director, and we want to have you open up everything you've got, and tell us and talk to us on a professional level and person to person and being quite open; and going in as an outside inspector. And we, of course,

have had outside inspections in the past—by the Clark report years ago—and I think there were one or two others which had a different quality. Now, this is a question, I think, that would have to be resolved.

Senator SCHWEIKER. Do you consider it part of your job to ferret out illegal activities? Is that your concept of what an Inspector General and the staff is supposed to do—ferret out activities within the Agency that violate the law? Is that part of your mandate as Inspector General?

Mr. STEWART. Oh, yes, indeed.

Senator SCHWEIKER. And you did put the mail opening in that category?

Mr. STEWART. Yes.

Senator SCHWEIKER. And you fairly well recommended that it be discontinued, is that correct?

Mr. STEWART. Right.

Senator SCHWEIKER. Obviously, they did not pay any attention to your recommendation. And my question is, how many times did you make a recommendation of some illegal activity to which they did pay attention as opposed to the times they did not? This is a fairly clear-cut violation yet the decision was made up above not to respect your views. My question is, how many times were you thwarted in this way, and how many times did they back you up in pointing out something that was illegal?

Mr. STEWART. While I was Inspector General, I really don't recall that we touched on other clearly illegal activities. It may be that it doesn't come to mind right now.

Senator SCHWEIKER. What is an Inspector General for? Maybe I have an erroneous understanding of how an Inspector General is used in other parts of government, but it would seem to me that one of the purposes of an Inspector General would be to ferret out illegal activities. In fact, one of the rationales as to why the Congress has not looked into the CIA before is the view that it polices itself and it does not need any outside supervision, because the CIA has its own methods and does this itself. I assume that policing mechanism would be the Inspector General.

The point is, and I am sure the same argument was made to the Foreign Intelligence Advisory Board, that you really have an internal policing mechanism and yet you do not see it as a mandate to ferret out illegal activities. I have great difficulty understanding what the purpose of the Inspector General's office is.

Mr. STEWART. I think we misunderstood each other. I would certainly say that as I came upon illegal activities, it would be my job to bring them right to the top, to the Director's attention, and we did that in this case. What I said was that in the surveys that we ran while I was Inspector General, I was not aware of other illegal activities that we had come upon.

Senator SCHWEIKER. You never came across any other illegal activities?

Mr. STEWART. That is quite correct.

Senator SCHWEIKER. During your tenure?

Mr. STEWART. Not that I can recall.

Senator SCHWEIKER. How do you account for what we are finding now in our House and Senate Intelligence Committees? Was this a

lack of communication or compartmentalization? Where did the breakdown occur, if what you say is correct?

Mr. STEWART. Could you be specific?

Senator SCHWEIKER. Well, we have been holding a number of hearings. We had a hearing here a while ago where a Presidential order was violated on shellfish toxin. We have been holding a number of other hearings where the CIA was not complying with the law of the land. And my question is, how do you account for the discrepancies that are now coming to light, when you are saying that during your tenure you really did not find any other illegal activities? I am a little bit confused. You are saying obviously that you did not know about them, but are you now maintaining there were no other illegal activities going on during your tenure as Inspector General?

Mr. STEWART. No, sir. I'm not maintaining that. I simply say that in the course of our surveys, which, I explained, we took about the rate of one every 5 years, we had in fact not come upon other illegal activities that I recall and about which we reported.

Senator SCHWEIKER. Did the rotation of component service stop in 1973, and were you aware of this situation?

Mr. STEWART. Well, I had heard that, yes. I was retired at that time. I had no voice in the operation of the Agency.

Senator SCHWEIKER. Did you consider it part of your job to see that the Agency lived up to its charter?

Mr. STEWART. Yes, indeed.

Senator SCHWEIKER. Then I gather that you probably would assume that mail opening, in addition to being illegal due to the mail laws, was also a violation of the charter's ban on internal security functions?

Mr. STEWART. That is quite correct.

Senator SCHWEIKER. That is correct.

Do you think it is appropriate not to have written authorization in projects of this kind and would written authorizations from people above you be a factor here in helping the Inspector General to have his finding implemented instead of ignored? In other words, would it help you do your job to pinpoint responsibility in writing, which you say apparently did not occur in many of these instances, in order to clarify who was contravening the IG's recommendation?

Mr. STEWART. Well, I explained it was not our job to follow up on recommendations that we made. That rested with the Executive Director. I have the feeling that our recommendations were clearly addressed to an individual. In the case of this project, they were addressed to the Chief of the Clandestine Service, Mr. Karamessines. There was no doubt in my mind as to who had the responsibility to act on those recommendations or give reason why they had not done so.

Senator SCHWEIKER. One final question for Mr. Glennon. Mr. Glennon, how and when did the FBI learn of the New York mail opening program?

Mr. GLENNON. I believe we put in our report in 1958.

Senator SCHWEIKER. How long had the program been going on prior to 1958?

Mr. GLENNON. Several years.

Senator SCHWEIKER. All right. Now, why didn't the CIA tell the FBI about this program?

Mr. GLENNON. I haven't the slightest idea. Perhaps they did.

Senator SCHWEIKER. Well, our information is that they did not. They came upon it inadvertently, so it just strikes me peculiar that we have an agency that is charged with internal security; that is, the FBI, and while this obviously was an illegal procedure, the CIA did it for a number of years without even telling the agency responsible for internal security that such an event was going on.

And it would seem to me that because, again, you are in the matter of who handles intelligence internally, that here again was something of which someone in the IG's office should have been aware. You do not feel that it is part of your responsibility to keep the right agency in the right job and to see who follows what internal security law?

Mr. GLENNON. I certainly feel that these programs should be coordinated in the intelligence community. Now, this project, I believe started out just as an operational effort of our Soviet division. It had nothing to do with internal security, but looking for operational leads against the Soviet Union. So, the internal security aspects apparently became important later on, when the Bureau, I don't know how they—

Senator SCHWEIKER. All the mail coming back to this country was opened as well as the mail going out, so it is a little hard to conceive how you cannot say it is not an internal security function.

Mr. GLENNON. I didn't say it is not. I just said it started as an operation.

Senator SCHWEIKER. When it first started, mail was read both ways. It was not just read one way. That is all I have, Mr. Chairman. Thank you.

Senator TOWER [presiding]. The committee shall stand in recess, subject to the call of the Chair. It should be about 10 minutes.

[A brief recess was taken.]

The CHAIRMAN [presiding]. The hearing will please come back to order.

I believe Senator Huddleston had been recognized.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Stewart, in your investigation, what type of people did you find was in the Agency who were actually performing the mail opening? What was their general experience?

Mr. STEWART. I refer that question to Mr. Glennon, because he was the one who talked with the people doing this job.

Mr. GLENNON. I believe that the people actually opening the mail were security officers.

Senator HUDDLESTON. They were not in counterintelligence?

Mr. GLENNON. Not to the best of my knowledge.

Senator HUDDLESTON. They had no experience particularly in counterintelligence?

Mr. GLENNON. No, sir. One of the recommendations we were making was to improve the personnel, analyzing it, in an attempt to improve the product.

Senator HUDDLESTON. So, for a project here that was designed primarily for counterintelligence, we had people who had no experience in counterintelligence?

Mr. GLENNON. As far as I know.

Senator HUDDLESTON. Who were randomly opening the mail without any guidance or without any substantial guidance, even from within the organization; is that correct?

Mr. GLENNON. I might defer that question to Mr. Abernathy. Do you have any comment?

Mr. ABERNATHY. I would say that is correct, sir.

Senator HUDDLESTON. They had no special expertise in being able to assess the value of the contents of any letter that they might open. Is that correct?

Mr. GLENNON. I believe they would. They were trained security officers and would be aware of activities which would be subversive and dangerous to the security of the United States.

Senator HUDDLESTON. But would they be aware of any counterintelligence implication?

Mr. GLENNON. No, sir, not especially.

Senator HUDDLESTON. Are you aware of exhibit 2,¹ the memorandum which sets out the description of this project? Do you have a copy of that? This is a memo dated November 7, 1955, Subject: HTLINGUAL.

Mr. GLENNON. Dated November 21?

Senator HUDDLESTON. November 21 was the cover memorandum to this project report. The project report itself, paragraph 6, under "Security," down at the very last few sentences indicates there will be special briefings of those to become knowledgeable and that a record kept of those so briefed. Did you find such a record?

Mr. GLENNON. There was a record; yes, sir.

Senator HUDDLESTON. Indicating the individuals who actually were participating and the fact that they had been briefed?

Mr. GLENNON. I never saw or held a list in my hand because I figured we could complete our inspection and make our recommendations to abandon that project without knowing all the names of the people involved. In the Agency we knew those obviously on a basis of need to know. We would really need to know who was cleared in this case for years past.

Senator HUDDLESTON. On this matter, then, discussing this project with the General Counsel and with other responsible individuals, was that neglect, in your judgment, because of this "need-to-know" policy that no person, even within the Agency, who did not need to know about it would be informed of it?

Mr. STEWART. As far as I am concerned, sir, the reason I didn't discuss it with the General Counsel was because I didn't feel it was necessary to do so.

Senator HUDDLESTON. From the standpoint of its legality?

Mr. STEWART. Correct.

Senator HUDDLESTON. You had no intuition that he already knew about it?

Mr. STEWART. I didn't know one way or another. It is a matter of fact; I did not discuss the project with him.

Senator HUDDLESTON. Would the subject of maintaining a policy of plausible deniability enter into the matter of whether or not there would have been broader discussion of it?

Mr. STEWART. Well, the reason for a list of people cleared to know about the project is to simply control a secret; that is, if you just have a few people who know about something, then you have better control

¹ See p. 187.

of whether this knowledge leaks out to other people. And, we always endeavored to keep those lists as short as we could.

Senator HUDDLESTON. Wasn't there also an interest within the Agency, if not on this project, on other projects, of operating in such a fashion that should it become public knowledge, that certain persons could be exempted from any blame, so to speak, on the basis that they did not have specific knowledge of it?

Mr. STEWART. I don't know how that would operate in this case. I haven't thought about that.

Senator HUDDLESTON. You don't believe that was a factor in this case? In that same paragraph in exhibit 2¹ that I just referred to, paragraph 6, headed "Security," there is this statement:

In the event of compromise of the aspect of the project involving internal monitoring of the mails, serious public reaction in the United States would probably occur. Conceivably, pressure would be placed on Congress to inquire into such allegations, but it is believed that any problems arising could be satisfactorily handled.

Do you have any idea or knowledge of what that phrase means and just how inquiry from Congress would be satisfactorily handled by this particular operation?

Mr. STEWART. This is the first time that I have read this memorandum. I don't know what was in the mind of the person who wrote it—"Public inquiry that would be raised publicly by the Congress"—I should have said would be very difficult to handle. Private inquiry, if it had been raised by a congressional committee with the Director, might have been another thing. I just don't know what they had in mind when they wrote this.

Senator HUDDLESTON. Do you have any knowledge as a result of your inquiry into the Agency of what method had been used in any other instance, or in this particular instance, relating to the handling of congressional inquiries into such matters?

Mr. STEWART. I always understood—I never had direct knowledge of this—I always understood that the Director of Central Intelligence, in dealing with the oversight committees as they existed at that time, felt at times called upon to take up with those committees matters of considerable sensitivity. But that was certainly not one area of my responsibility. I never participated in any such talks, and that is about as much as I can help you on that.

Senator HUDDLESTON. The record would indicate that the Director had been pretty successful over the years, would it not, viewing the extent of congressional oversight into this kind of operation?

Mr. STEWART. That was my understanding.

Senator HUDDLESTON. Let me refer you to exhibit 3,² which is a memorandum for the Director of Central Intelligence through the Chief of Operations, relating to this Project HTLINGUAL. This apparently is a summary. This is dated May 4, 1956, some several months after the project had been in operation. It appears to be an update or a review of just what the project is. It says in the second paragraph:

You will recall that Project HTLINGUAL is a very sensitive project involving the analysis of mail entering New York City from the Soviet Union. While the project was originally designed to examine and record information from only

¹ See p. 187.

² See p. 195.

the outside of the envelopes, for some time selected openings have been conducted and the contents examined. This is, of course, without the knowledge of the postal authorities.

Does it seem there that since this is such a perfunctory phrase, "This is, of course, without the knowledge of the postal authorities," that there must have been an awareness that the operation itself then could not be approved if postal authorities were aware of it?

Mr. STEWART. I think that would be one logical conclusion to this, yes.

Senator HUDDLESTON. This memorandum goes on to indicate the types of some of the mails that are being opened, and in paragraph 5 it says:

It is interesting to note that of 20 letters which were in the analysis, one mentioned that a brother was a priest, two had Christmas greetings, four starting out with the wording "Praised be Jesus Christ," one used the phrase "Thank God"—for a total of 8 out of 20 with some religious reference.

Would you consider this mail coming from the Soviet Union to be of important foreign intelligence?

Mr. STEWART. No, sir.

Senator HUDDLESTON. Would it be important counterintelligence information?

Mr. STEWART. Not in my view.

Senator HUDDLESTON. The final paragraph says:

It is hoped that when we are better staffed to analyze this material for other than counterintelligence purposes, other and perhaps more significant data may be obtained.

Does your information or your inquiry indicate that there were serious efforts along the way to evaluate the product of this operation and whether or not it was, in fact, providing any kind of intelligence that was worth the infringement upon the privacy that it involved in the random opening of thousands of letters?

Mr. STEWART. My feeling about it is that when you have available a source such as this, it certainly is incumbent on the Agency to try to find out whether in the materials received there are things of potential positive intelligence value. I suppose that paragraph 5 could be read to say that despite the antireligious policies of the Soviet Union there is a survival of religion, I think a very minor subject, but that is apparently what was intended here. Other such minor matters might have been derived from these letters. But beyond that I would only speculate. I never read any batch of them. I don't know what this kind of thing contained or could possibly have contained.

Senator HUDDLESTON. It seems to me the tenor of the entire body of memoranda that were made before May 1956, was that most of the information received has been very insignificant and has knowingly gone into an operation that just randomly infringed on the privacy of many, many citizens and the opening of their private mail. It seems that just a cursory examination would dictate that we ought to be getting something pretty significant that is pretty earth shaking in order to justify that kind of operation.

Mr. STEWART. Mr. Angelton makes it clear that he is talking about something—let us say, an added bonus—to the basic counterintelligence value of these materials. He, of course, was the CIA's Chief of the Counterintelligence Staff.

Senator HUDDLESTON. He indicates that he hopes within the future they would be able to derive something more significant from the operation. The memorandum seems to me to express a hope.

Mr. STEWART. Yes; well, you could read it that way. I would read it that he is satisfied with his counterintelligence data and perhaps something more significant than what you have in paragraph 5 might be obtained.

Senator HUDDLESTON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Goldwater, do you have any questions?

Senator GOLDWATER. I have two short questions.

Mr. Glennon was Mr. Stewart's IG, I believe, at one time, and I think he conducted a survey of the Counterintelligence Staff and reviewed the New York mail project. Is it true that you testified that you knew of no agency consumer who was satisfied with the results of the operation?

Mr. GLENNON. That is right, sir, no internal CIA component.

Senator GOLDWATER. And, notwithstanding this, the operation continued?

Mr. GLENNON. Yes, sir.

Senator GOLDWATER. This operation continued for 20 years at a substantial risk to the Agency. Isn't it likely that some high officials in a position to evaluate its worth found the intelligence "take" to be of overriding importance?

Mr. GLENNON. Yes, sir, it is possible. Unbeknownst to me, it is possible that the Chief of the Counterintelligence Staff, the Director, and other senior officials might have discussed this and decided to keep it. I have no idea. All I would know is people I talked to, the customers within the Agency, work day-to-day people, found very little use for the material.

Senator GOLDWATER. Is that the practice in other countries, to have mail intercepted?

Mr. GLENNON. I think this mail that we are talking about has already been intercepted by the Soviet Union and the Russian intelligence service. But our situation was to see what was already known to the Russians. Personally, if I had a letter opened from the Soviet Union, I would not object because I would not mind the FBI knowing what the Russian intelligence service knows.

Senator GOLDWATER. One other question.

Mr. Abernathy's 1960 review of the New York project revealed no documentation of authorization for openings from within or outside the Agency. The report states that the DCI, the DDP, and the DDS were aware of the project from inception and that their approvals may therefore be implied. My question is, for an operation of this sensitivity, is there anything unusual about a lack of documentation?

Mr. ABERNATHY. No, sir. I would not say it would be unusual in this case.

Senator GOLDWATER. That is all I have, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Goldwater.

Senator Tower?

Senator Tower. Mr. Glennon, in your 1969 review of the New York project, did you discover or find any documentary evidence that authorized mail opening?

Mr. GLENNON. No, sir.

Senator Tower. Mr. Stewart, you have told the staff that your reason for not telling the General Counsel of the operation was that your responsibility was to the DCI. If the DCI wanted a legal opinion, that was his prerogative. But you never raised the illegality of the question with the DCI or notify him that such an opinion should be solicited. Why?

Mr. STEWART. I certainly did not raise the legality question in the written report. I assumed that the Director knew of its status as a project that was beyond the law, and in my deposition I said that if he had a reason for exploring this problem with the General Counsel, that would be up to him. I did not feel it was up to me to take it up with the General Counsel.

Senator Tower. You felt it was illegal?

Mr. STEWART. Yes, indeed.

Senator Tower. But you did not make any recommendation to the DCI on that?

Mr. STEWART. I recommended that we consider closing the project because of its flap potential.

Senator Tower. Do you have any recommendation, short of an independent Inspector General, that would prevent the institution of illegal projects of this kind or, do you think that the only way to prevent it is to have an independent Inspector General?

Mr. STEWART. Well, I can imagine many ways that you could do this. I think one would be perhaps looking at the basic law that authorizes the operations of the CIA and specifying those areas in which the Agency could not deal in some greater degree of exactness. Certainly having an independent Inspector General would provide another check on the operations of the Agency. I think if you did have such an Inspector General, it would be absolutely necessary that he be included in all operations, that the need-to-know principle not be applied in his case, that he would have a need to know of everything that was done if you expect that he will operate in this way. Those would be the ways that come to mind, as far as I am concerned, in avoiding repetition of this sort of thing.

Senator Tower. Now, from the mid-fifties until 1966, both the CIA and the FBI were opening mail. Are either you or Mr. Abernathy able to shed any light on the nature of the liaison, if any, that existed between the CIA and the FBI?

Mr. STEWART. I really can be very little help on that. I knew that we had a regular established liaison channel, and as we state in our report, by 1969, when we got around to it, their liaison officer said to us that the FBI wanted very much to have us continue the project and provide this take to them. But the history of this is something I have not myself gone into. I cannot help you much.

Senator Tower. Can you add anything to that, Mr. Abernathy?

Mr. ABERNATHY. No, sir, I cannot.

Senator Tower. To the best of your knowledge, did either the CIA or the FBI recommend that you limit the scope of the openings to the mail of probable violators of the espionage laws?

Mr. STEWART. I know of no such action.

Mr. ABERNATHY. Nor I, sir.

Senator TOWER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tower.

I think it was you, Mr. Glennon, who said that you would have no objection to the Government opening your mail since the Russians opened mail. That intrigues me very much.

Mr. GLENNON. Sir, I defend this project of the Agency in no way whatsoever. It was illegal and should have been discontinued. I am just speaking of my personal opinion, that I would really not object unless I had an ax to grind somewhere; then I might. I might make a lot of publicity about it. But I have no ax to grind.

The CHAIRMAN. It is your personal opinion. I understand you do not defend this because it was illegal. You just say personally you have no objection to the Government opening your mail because the Russians open the mail. That is the thing I wanted to get at.

Would you have any objection to our police coming in and searching your home without a warrant because the Russian police do not have to have a warrant?

Mr. GLENNON. Oh, I draw the line. I draw the line.

The CHAIRMAN. Oh, you draw the line?

Mr. GLENNON. Of course, sir. I don't really support the idea at all. I'm just saying I wouldn't condemn the Agency or the Bureau if they opened my mail. I'm saying personally, having had it done, I don't think you should make such a big hullabaloo out of it. I think it was done—it is not being done any longer—and I think the Agency should be given a chance to go ahead.

The CHAIRMAN. The Supreme Court of the United States does not draw the same distinction that you do, between searching a house and searching the mail. They said, and it has been the law of the land for a long, long time, that the mail is entitled to the same protection as a person's house.

Mr. GLENNON. Right.

The CHAIRMAN. But the law didn't mean very much to any of you gentlemen, did it?

Mr. GLENNON. Yes, it did, sir. We said it was illegal, and we recommended that it be discontinued. What more can you do? It meant something, going to the General Counsel, for example.

The CHAIRMAN. When Mr. Stewart testified a few minutes ago, he said that you recommended it be discontinued.

Mr. GLENNON. Right.

The CHAIRMAN. Not because of the illegality, but because of the flap potential.

Mr. GLENNON. The flap potential is because it was illegal.

The CHAIRMAN. Yes, but the flap potential was what worried you. As a matter of fact, in none of your reports did you even speak of the illegality.

Mr. GLENNON. It speaks for itself, sir.

The CHAIRMAN. You said it spoke for itself. You were concerned it might embarrass the Agency. It wasn't your concern—

Mr. GLENNON. That is one concern, sir.

The CHAIRMAN. It was not your concern that the law had been violated.

Mr. GLENNON. Yes, sir, it—

The CHAIRMAN. Well, if it had been your concern that the law had been violated, why wouldn't that have figured into your reports?

Mr. GLENNON. It did. We recommended that it be stopped.

The CHAIRMAN. You recommended that it be stopped because it might embarrass the Agency if it had been revealed.

Mr. GLENNON. Sir, I also recommended the 17 ways to improve this project in case it were continued. Now, our job is to inspect and report what we find. We found that it was illegal. We recommended it be stopped. But, if for some other more important reason it was continued, then we would recommend some steps to improve upon the operation.

The CHAIRMAN. Mr. Glennon, in 1960, the first report said "evaluated and approved." Through the years the evaluation showed it was not worth continuing.

Mr. GLENNON. Yes, sir.

The CHAIRMAN. You recommended that it be stopped. You did not really recommend in 1969 that it be stopped. You said it still wasn't worth anything. You were worried about the flap that might develop if the Agency had been caught having conducted 20 years of illegal mail openings. You didn't recommend that it be stopped as far as the mail openings were concerned. You recommended that it be turned over to the FBI so that the FBI could take the risk. Isn't that right, in 1969?

Mr. GLENNON. They were the principal customers. I recommended it be stopped, period. Then, if it were not stopped, they should turn it over to the FBI since they were the principal customer, and ask them to serve our requirements if we had any.

The CHAIRMAN. So, all through this period that you were investigating this program that you, yourselves, evaluated as worthless, or at least not worthwhile enough to continue, and then recommended finally that it be stopped or turned over to the FBI, none of these recommendations affected the Agency. The Agency continued to use the program.

What is the Inspector General's Office for, and is there no follow-through with respect to its recommendations? Is there no report back, so that you know whether or not your recommendations have been approved or disapproved? Is there no connection between the Inspector General's Office and the counsel that is supposed to try to keep the Agency operating within the law? How is it that year after year after year these reports go in and nothing happens and no reports come back? What is the matter with the Inspector General's Office that it is so impotent?

Mr. STEWART. Is that for me?

The CHAIRMAN. Anyone who wants to answer.

Mr. STEWART. The Inspector General's Office was a device used by the Director to bring to the surface problems that he should consider and that other senior officials in the Agency should consider. We certainly did not have the authority to give orders to close things. We had, however, the authority to report and to recommend. It was then up to the Agency management to decide how they would deal with these recommendations.

Routinely, the replies to recommendations—in this case, the reply that Mr. Karamessines would have made to the recommendations

addressed to him—would have been sent to the Executive Director's office and then passed on to us. If it were a reply which said "we don't go along with this recommendation," the Inspector General would then have an opportunity to state again, or to state in other terms, the reasons for his recommendation or his reasons for not agreeing with our Chief of the Clandestine Service.

The CHAIRMAN. Did that happen in any of these cases?

Mr. STEWART. In this case, to my knowledge—and I have been told this by Mr. Wallach—that reply did not come back to us. I don't know why and I, myself, in conducting the affairs of the Inspector General's Office, did not run a tickler on the Executive Director. He had the followup responsibility. I simply assumed that his office would take each of the many recommendations that we had, follow up and be sure that we got some response. How this one happened to fall through and not be responded to is a question I can't answer.

The CHAIRMAN. This program has been going on for some time. I have the figures here to show the extent of the program, which I will reveal when the next witness, who is best able to testify on this subject, comes to the stand. Figures that I do not believe have been released before will show how very large the program was, how long it continued, and the fact that it was clearly against the law throughout that period, even though it was unproductive in terms of intelligence gathering.

Mr. STEWART. I should like to just say on that that it is certainly my understanding that the Federal Bureau considered it to be productive from the point of view of intelligence gathering. That at least is what their liaison officer told us.

The CHAIRMAN. Well, we will have the Federal Bureau here to testify directly on that score. The point that I wish to make is that I cannot think of a clearer case that illustrates the attitude that the CIA lives outside the law, beyond the law, and that, although others must adhere to it, the CIA sits above it, and you cannot run a free society that way. Either your intelligence agencies live within the law, or the beginning of an erosion that can undermine the whole society is put in motion and that is what we have seen—the erosion of illegal practices begins with the CIA and then extends to the FBI. We will be seeing many instances, flagrant instances, of that erosion from the very agency that is supposed to enforce the laws of this country; then it extends to the Internal Revenue Service, the Post Office Department, and pretty soon it begins to permeate the whole Government. That is why it is going to stop, and I hope that this investigation has something to do with stopping it.

If there are no further questions, we will go to our next witness.

Mr. Osborn, would you please stand and take the oath? Do you solemnly swear all the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. OSBORN. I do.

The CHAIRMAN. Mr. Schwarz, would you begin the questioning?

Mr. SCHWARZ. Counsel, would you identify yourself, and does Mr. Osborn have an opening statement?

Mr. DEBELIAS. Yes; yes, my name is John Debelias. I am Mr. Osborn's counsel. He does have an opening statement, which he would like to read. We have provided copies of this statement.

TESTIMONY OF HOWARD J. OSBORN, FORMER DIRECTOR OF SECURITY, CENTRAL INTELLIGENCE AGENCY, ACCCOMPANIED BY JOHN DEBELIAS, COUNSEL

Mr. OSBORN. Senator Church, Senator Tower, and the other distinguished Senators who are members of this committee, I am here today at your invitation.

My Federal service has extended over a 32-year period; 27 of those years were spent with the CIA. I am proud of my service with the CIA, and I am proud of the thousands of dedicated men and women with whom I worked in the CIA. I retired from the CIA on December 31, 1974, after having been on sick leave from March 8, 1974, until the date of my retirement.

My last 10 years of active service with the CIA were spent as the Director of Security. I was responsible to the Director of CIA and to the other senior CIA officials for personnel security and for the security and protection of classified information, data and installations, both in the United States and abroad. During my tenure as Director of Security, I served successively under Mr. John A. McCone, Admiral William Raborn, Mr. Richard Helms, Mr. James R. Schlesinger, and Mr. William F. Colby.

I do not now have access to CIA files and records. As I answer your questions, please understand that my memory may be unclear or imprecise as a result of passage of time, or because the knowledge I had or have of the events being reviewed here was a general one and not specific as to all details.

At all times, while serving as Director of Security, I acted with the knowledge and approval and at the instruction of the Director of CIA and in many, if not most, instances, with the knowledge and approval of other senior Agency officials in the chain of command. I should like to emphasize that security in the Agency is a service and support function and its activities are not self-generated.

Among other services, the Office of Security provided guidance and assistance to employees with personal problems; it provided support to other Agency components upon authorized request and performed tasks and special inquiries assigned to it by the Director of CIA. The Director of CIA was empowered and directed by the National Security Act of 1947 to "protect intelligence sources and methods." By virtue of and extension of that authority, those actions and activities within my purview were designed to prevent potential penetration of the Agency by hostile intelligence services, afford protection to the Agency's domestic installations, and to determine the sources of unauthorized disclosure of classified and sensitive intelligence information to public media.

In retrospect, I feel that the charter of CIA was broad and general and designed, perhaps, to permit a wide latitude of operations. As a citizen, I am concerned that legislative efforts in the field of intelligence may hobble organizations which must react quickly to new requirements and provide our national leaders with a perceptive appraisal of threats facing our Nation. I do not doubt that you gentlemen will act in good faith in recommending new legislation to channel and manage intelligence efforts. However, I hope you agree with me that whatever form our intelligence agencies may take based on any new legislation, there is an increasing, not diminishing, need to pro-

vide the President, the National Security Council, and the Congress with hard, accurate, comprehensive, and timely intelligence.

In your review of the activities of CIA, over a long period of time, I hope that you will look not only at its actions, but the possible consequences of its failure to act.

From my own point of view, I have rendered loyal service to my country and to its citizens during all my Government service. To the best of my knowledge and belief, I have not acted at any time in my CIA service in an unlawful manner nor have I acted in derogation of my duty to the U.S. Government.

The CHAIRMAN. Thank you very much for your opening statement. Mr. Schwarz will commence the questions.

Mr. SCHWARZ. Mr. Osborn, when were you Director of Security?

Mr. OSBORN. From July 1, 1964, to March 8, 1974.

Mr. SCHWARZ. What function did the Office of Security play in connection with the various mail-opening projects of the CIA?

Mr. OSBORN. The Office of Security acted as the physical entity which conducted the activities.

Mr. SCHWARZ. You copied the exteriors, filched the letters, took them off to another location for copying, copied whatever was opened, and returned them to the mailstreams?

Mr. OSBORN. That is correct. It was done by Security personnel.

Mr. SCHWARZ. When I say filched the letters, I mean removed them from the Post Office Department and took them to another location, which was the CIA location for copying; is that right?

Mr. OSBORN. Right.

Mr. SCHWARZ. Now, during the time you held the position of Director of Security, did you know about all the mail-opening projects?

Mr. OSBORN. I knew of only one at the time I accepted the position.

Mr. SCHWARZ. Was there another one that went on during the time you held that office which you did not know about?

Mr. OSBORN. No, not to my knowledge.

Mr. SCHWARZ. We will come to that in a moment. Was the project in New York discontinued during your tenure?

Mr. OSBORN. Yes, it was.

Mr. SCHWARZ. Did you know throughout your tenure that the project was illegal?

Mr. OSBORN. Yes, I did.

Mr. SCHWARZ. Now, why was it knocked off?

Mr. OSBORN. It was terminated at my recommendation; part of the genesis of my recommendation was a strong and overriding concern of Mr. William Cotter, who was then Chief Postal Inspector, that the project should be terminated. I communicated this to Mr. Karamessines, and, in turn, we met on various occasions with the Director then in the chair.

Mr. SCHWARZ. I want to discuss who Mr. Cotter was and why he had a problem in a moment, but I would like to read to you from page 39 of your deposition, starting at line 15, in which you stated to Mr. Karamessines the reason that it should be knocked off when it was knocked off. Have you got that in front of you?

Mr. OSBORN. Yes.

Mr. SCHWARZ. I'm going to exclude the profanity unless you want me to read it.

Mr. OSBORN. Please do.

Mr. SCHWARZ. You said to Mr. Karamessines the following: "And I went to Mr. Karamessines and said this thing is illegal as hell," then I'm excluding something, "and we ought to knock it off right now in the light of Watergate climate." Now, how did the Watergate climate help persuade the CIA finally after 19 years to knock off the program which you knew to be illegal?

Mr. OSBORN. I think it's because we believed that there would be tremendous embarrassment to the Agency, particularly in light of the Watergate climate, and it was.

Mr. SCHWARZ. So, we can say, thank God for Watergate on this occasion.

Mr. OSBORN. I'm not going to say that, but you said it.

Mr. SCHWARZ. It helped, didn't it?

Mr. OSBORN. The climate provided it, certainly, I would think.

Mr. SCHWARZ. What are you saying now? What do you mean, Mr. Osborn? What climate? What good did that do? Why did it help? Why did you finally wake up to the problem? What was different? What were you afraid of?

The CHAIRMAN. Getting caught.

Mr. OSBORN. I think in the light of some of the disclosures during the Watergate sessions, that it came very fortunately to a lot of people's attention that the Government shouldn't do things that were illegal.

Mr. SCHWARZ. Did the Watergate climate lead to any other changes in the CIA?

Mr. OSBORN. Not to my knowledge.

Mr. SCHWARZ. Didn't it have anything to do with the instructions which were issued in 1973 to knock off all kinds of programs?

Mr. OSBORN. I'm sure it did, yes.

Mr. SCHWARZ. You know the instructions I'm referring to?

Mr. OSBORN. I have seen them, yes.

Mr. SCHWARZ. It was the general group of instructions from the Director.

Mr. OSBORN. Those are the ones who were issued by Mr. Colby.

Mr. SCHWARZ. Yes. Now, let us talk about Mr. Cotter for a moment. Had Mr. Cotter been in your office before he went to the Post Office?

Mr. OSBORN. Yes; he was a security officer in my office.

Mr. SCHWARZ. And he went to the Post Office in 1969, is that right?

Mr. OSBORN. Approximately then, yes.

Mr. SCHWARZ. And the project wasn't knocked off until 1973, is that right?

Mr. OSBORN. That is correct.

Mr. SCHWARZ. So, his enormous concern about the program, as you put it, couldn't have had terribly much to do with it, if it kept going for 4 years after he went over to the Post Office Department, isn't that right?

Mr. OSBORN. Well, I think he expressed concern about it several times. The fact that was apparent to me that it bothered him and he knew about this, and that it was certainly not consistent with his responsibilities as Chief Postal Inspector.

Mr. SCHWARZ. And he frequently discussed it with you and said he felt badly about it, but, once again, nothing happened in this case for 4 years, is that right?

Mr. OSBORN. I think I made the first recommendation to Mr. Kara-messines in 1971 or 1972. My memory isn't precise.

Mr. SCHWARZ. But you have been hearing about Mr. Cotter's problem from the time he went to the Post Office, which was in 1969, isn't that right?

Mr. OSBORN. That's true, that's true.

Mr. SCHWARZ. So, for 4 years this man apparently felt uncomfortable, but the program just kept marching along, isn't that right?

Mr. OSBORN. That is correct.

Mr. SCHWARZ. Now, would you look at the document which is exhibit 4,¹ please. It is a document dated June 3, 1971.

Mr. OSBORN. Right.

Mr. SCHWARZ. Memorandum for the record. Headed: "Subject: Meeting at DCI's Office Concerning HTLINGUAL." That is the code name for the mail-opening project, right? And you attended that meeting, didn't you?

Mr. OSBORN. That is correct.

Mr. SCHWARZ. In that meeting, Mr. Helms said that he had briefed Attorney General Mitchell, and that Attorney General Mitchell had said he had no hangups concerning the project. He was going to discuss it with Mr. Helms tomorrow afternoon, but Mr. Helms also said that he briefed Mr. Blount, the Postmaster General, and "His reaction, too, was entirely positive regarding the operation and its continuation." Did you have a conversation with Mr. Cotter at some time after Mr. Helms went to see Mr. Blount, in which the subject of what was told to Mr. Blount was discussed between you and Mr. Cotter?

Mr. OSBORN. Yes, I did.

Mr. SCHWARZ. And did Mr. Cotter express some doubt to you as to what was, in fact, told to Mr. Blount?

Mr. OSBORN. I can't recall the details of our conversation, Mr. Schwarz.

Mr. SCHWARZ. Well, could I read into the record to you and see if this will refresh your recollection? From the bottom of page 78 to the top of page 79 of your deposition the question was "Do you recall Mr. Cotter ever telling you he's not sure as to what the Postmaster General was briefed about?" and your answer was "It seems to me that I recollect in connection with our discussion, it seems to me that I recall some indication, I don't know how much he told them, but whatever he told them, it certainly didn't hurt me. I think there was some indication that he"—that must be Blount from the context, right?

Mr. OSBORN. No, I think it's Cotter, and the implications, the statement, it certainly didn't hurt me, was Cotter's also.

Mr. SCHWARZ. Right. "I think there was some indication he didn't know much detail and got the clear understanding that he didn't know the detail, for example, that was reported in this memorandum."

Mr. OSBORN. That is correct.

Mr. SCHWARZ. I have one final question. Without using the name of the country, were you advised during your tenure as Chief of the Office of Security that the CIA wanted to engage in some mail project concerning a Far Eastern country?

Mr. OSBORN. Yes.

¹ See p. 197.

Mr. SCHWARZ. And did the Office of Security, in fact, set up in San Francisco an order to do something with the mail concerning that Far Eastern country?

Mr. OSBORN. It made arrangements with the local postal inspector for other personnel in the Agency to inspect the mail, yes.

Mr. SCHWARZ. And were you told by the persons within CIA that were seeking to set up that project that it was to be purely the photographing of the exterior and was not to involve opening—

Mr. OSBORN. That was my clear understanding.

Mr. SCHWARZ. And is that what you told Mr. Helms when you briefed him about that particular project?

Mr. OSBORN. I sure did. I'm sure it was.

Mr. SCHWARZ. And is that what you told the Post Office officials prior to getting their permission to start the project in San Francisco?

Mr. OSBORN. That was the substance of my conversation with Mr. Cotter, a very clear understanding.

Mr. SCHWARZ. And to make clear what you are saying, you told Mr. Cotter that you wanted to do something with the mail in San Francisco, but it did not involve opening?

Mr. OSBORN. I'm not sure I was that specific. I think I may have said that it was a mail-cover operation.

Mr. SCHWARZ. What does mail cover connote to some expert in the field?

Mr. OSBORN. Mail cover is photographing and examining externally the piece of mail.

Mr. SCHWARZ. OK. Now, despite what you were told by other persons within the CIA, what you say you told Mr. Helms and what you say you told Mr. Cotter, did you subsequently learn that, in fact, mail was opened in San Francisco?

Mr. OSBORN. Yes; I did in my home.

Mr. SCHWARZ. You don't mean it was opened in your home?

Mr. OSBORN. No, no. No way.

Mr. SCHWARZ. What do you mean?

Mr. OSBORN. The person that was involved in the operation—I believe in all three of the operations and I'm sure of that—we were discussing it in the context of the activities of the Senate and the House and the Rockefeller Commission, and he said, "You didn't even know we were opening it, did you?" and I said, "I certainly did not."

Mr. SCHWARZ. Did you feel you had been misled?

Mr. OSBORN. Yes, I did.

Mr. SCHWARZ. I have nothing further.

The CHAIRMAN. Mr. Smothers?

Mr. SMOOTHERS. Thank you, Mr. Chairman.

The CHAIRMAN. Concerning the discussion on the information you reported to Mr. Helms, is it your belief that this information was communicated further, Mr. Osborn?

Mr. OSBORN. I have no knowledge of the Director taking it any further.

Mr. SMOOTHERS. You have no knowledge then of any conversation which might have occurred between Mr. Helms and the Postmaster General or anyone else regarding this matter?

Mr. OSBORN. Regarding the San Francisco operation?

Mr. SMOOTHERS. Yes.

Mr. OSBORN. No.

Mr. SMOOTHERS. Do you have any knowledge of any conversations that may have occurred between Mr. Helms, Mr. Blount, who was the Postmaster General, or anyone else concerning mail openings generally?

Mr. OSBORN. None, other than that talk that we have already covered.

Mr. SMOOTHERS. Both your testimony and the testimony of others indicated that this project was not only illegal but from the standpoint of its take, if you will, worthless or close to useless in terms of the yield. Is that still your opinion?

Mr. OSBORN. I can speak only for the immediate area of my responsibility, the Office of Security; it never was of great value to us. I cannot speak for other consumers in the Agency.

Mr. SMOOTHERS. As the Director of Security, was it your responsibility to run this program?

Mr. OSBORN. It was our responsibility to do the actual work involved, all the policy guidance requirements, directives, changes came from the Counterintelligence Staff. It was their project. You might liken it this way, Mr. Smothers. You might say that they built the Cadillac, they drove it. I maintained it, I changed the oil, I greased it, I saw that it was kept in running condition. I didn't know where it was going and I had no authority to change it.

Mr. SMOOTHERS. I think we understand that.

Without minimizing the very serious issues involved here, your responsibilities to maintain and grease this Cadillac involved the expenditure of government moneys. It involved some decisions indeed about the efficiency of such an operation. In your capacity, then, as the Director, as the one responsible for keeping the machine running, did you not consider it a bit of an extravagance to spend money on something that was worthless?

Mr. OSBORN. Yes, I did. As a matter of fact, I think it was in 1969, my office was facing the necessity of reducing our keyhole slots, or vacancies as we call them, and one of the top priority items I had was the elimination of necessary position vacancies in New York to carry out this project, because we got nothing from it. And I didn't see that I should sacrifice other positions that were in the office for these. We got no benefit from it at all. I was not successful.

Mr. SMOOTHERS. You were not successful. Would it be fair to say then that your approach, your role in this operation, was simply to communicate to higher levels of the bureaucracy that we were wasting money and effort, along with conducting illegal activities, and simply to hope for something to change?

Mr. OSBORN. I reported my views on this to Mr. Karamessines. I reported it to my immediate superior, Deputy Director for, I guess, the report at the time. And in a meeting with Mr. Karamessines, Mr. Angleton and someone else who I can't remember at the time, I made the recommendation to the Director. Having done that I didn't feel that I knew anything about it or that I wanted to know.

Mr. SMOOTHERS. Do you believe, Mr. Osborn, that given your experience in trying to communicate this information and trying to tell

them that the maintenance that was being performed on this Cadillac was worthless—

Mr. OSBORN. The maintenance was very good. The product was worthless. In my opinion, as far as my office was concerned, I don't want to characterize or evaluate the value of the other elements.

Mr. SMOOTHERS. Does this experience give you any basis to help this committee with how we might be sure that the kinds of recommendations you made would be surfaced at a level where closer attention would be paid to it, or are you satisfied it received close enough attention?

Mr. OSBORN. I'm very satisfied that it received close attention by the Director.

Mr. SMOOTHERS. So, what we come down to then is a policy disagreement between you and others on the worth of this information.

Mr. OSBORN. That is exactly right. But remember, I was just one small consideration.

Mr. SMOOTHERS. I think we understand your office.

Thank you, Mr. Chairman.

The CHAIRMAN. Your assessment happens, however, to correspond with the assessment of the successive investigations conducted by the Agency's own Inspector General's office, on the whole program.

Now, I am going to continue to follow the practice of turning to the other Senators first, but I just want to read into the record the figures that show how large a program this was through the years.

Beginning in 1953 and ending finally in 1973, the figures show that there was a total volume of letters coming through the New York Post Office that was subject to culling and opening and photographing by the CIA, in this particular program, a total of 28,322,796. Of that number, based as we have heard now on certain watch lists that were established, but in the main, on random selection accounting for two-thirds of the inspections, there was a total of 2,705,726 envelopes that were photographed plus 389,324 envelopes that were copied.

And the number of those letters that were illegally opened and whose contents were photographed came to 215,820, of which the photographed contents were distributed as follows: 57,846 were sent to the FBI; 31,436 were sent to the Soviet division of the CIA; and 57,894 were sent to other departments, largely counterintelligence departments of the CIA.

I think those figures speak for themselves, that it was a program that not only extended for a great number of years, but also was very sizable. It was a very sizable volume of mail that was opened, photographed, and distributed.

Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Osborn, when you became Director of the Office of Security you inherited this ongoing project. Prior to becoming Director, you had been Deputy Director. Were you aware that during that time of the nature of the mail-opening program?

Mr. OSBORN. Yes, sir, I was for two reasons; one, because I was briefed on it when I became Deputy Director of Security; but beyond that, immediately before I became Deputy Director of Security, I was chief of the Soviet-Russian Division in the operational component and had been briefed and cleared and knew of it in that context.

Senator HUDDLESTON. Knew the full extent of it?

Mr. OSBORN. Yes; I had no idea of the volume. As a matter of fact, I have not seen these statistics until my attorney and I went to the Agency yesterday to review certain information which was declassified and provided as guidance for what was classified—it's the first time I have ever seen it.

Senator HUDDLESTON. So, until that time, you had no idea of the volume?

Mr. OSBORN. No; I suspected it was high, but quite frankly I was surprised to see the volume.

Senator HUDDLESTON. Well, while you were greasing and changing the oil and servicing this operation, did you have direct knowledge of specifically what was being done by your employees in carrying out this assignment?

Mr. OSBORN. No, sir, I knew they had a requirement list or a guide list or a watch list, that they were checking mail against that list. I never saw such a list to my certain knowledge during my tenure as Director of Security. I saw only one piece of mail from this project.

Senator HUDDLESTON. You did not know what specific methods they were using, just how, in fact, they were intercepting the mail?

Mr. OSBORN. I think I knew the means, yes.

Senator HUDDLESTON. You had an understanding?

Mr. OSBORN. Yes; when I became Director I actually went up and examined the facility.

Senator HUDDLESTON. You did go up and see the operation?

Mr. OSBORN. Yes.

Senator HUDDLESTON. Did you go to the Post Office where it was being intercepted or did you go where it was being copied?

Mr. OSBORN. No; I only went where it was being copied, which was an annex or adjunct to my Manhattan field office.

Senator HUDDLESTON. Were you called upon to approve or disapprove the San Francisco project?

Mr. OSBORN. I was called upon—the proposal was made to me, I was told that Mr. Karamessines had got Mr. Helms' approval. Because of the sensitivity of it, I believe I recall mentioning it to the Director personally, because I don't like secondhand information. I wanted his personal assurance that he approved it.

Senator HUDDLESTON. Did you understand that operation to be a mail cover, that is, an examination of the exterior of envelopes, or a full mail-opening project?

Mr. OSBORN. It was my full understanding it was a mail cover.

Senator HUDDLESTON. And not a mail opening?

Mr. OSBORN. There was no mention of mail opening to me.

Senator HUDDLESTON. It was your judgment that—

Mr. OSBORN. Until several months after I left the Agency.

Senator HUDDLESTON. Until after you had left the Agency?

Mr. OSBORN. Yes, sir.

Senator HUDDLESTON. Was it your understanding that that was also the understanding of Mr. Helms and Mr. Karamessines?

Mr. OSBORN. It had to be because if it involved opening I most certainly would have told Mr. Helms. I never lied to Mr. Helms in my life.

Senator HUDDLESTON. Who proposed this project?

Mr. OSBORN. A representative of the Agency's Technical Services Division, which was then in the operational component, and a representative of the Far East Division of the operational component.

Senator HUDDLESTON. And he represented it to you as being just a mail-cover operation?

Mr. OSBORN. That's right.

Senator HUDDLESTON. You later found out that it was opening.

Mr. OSBORN. After I retired.

Senator HUDDLESTON. Were you still there when the order came down from the Secretary of State to suspend this operation due to the impending visit of our Executive to an Asian country?

Mr. OSBORN. I don't recall this.

Senator HUDDLESTON. You are not aware of that?

Mr. OSBORN. No; I might have been aware but I don't recall it now.

Senator HUDDLESTON. During your tenure, were you aware that the Agency was purposely misleading the postal department which had given approval only for mail cover and not for a mail-opening operation?

Mr. OSBORN. Not during my time with the Agency, no sir. On the San Francisco project?

Senator HUDDLESTON. Well, either one.

Mr. OSBORN. I knew the New York project involved opening, yes.

Senator HUDDLESTON. And it was kept from the postal officials that you were actually opening the mail?

Mr. OSBORN. I think that is true, yes.

Senator HUDDLESTON. I believe you have testified that you contended on several occasions that this project was not worth its risk.

Mr. OSBORN. Insofar as my office was concerned.

Senator HUDDLESTON. The risk to the Agency was too great for the product that was being produced.

Mr. OSBORN. That's right. In evaluating the product again, I am evaluating only as concerned my own area of responsibility.

Senator HUDDLESTON. It was not your responsibility or your group's responsibility to evaluate the actual mail that they copied, is that correct?

Mr. OSBORN. No, sir.

Senator HUDDLESTON. What was your judgment of the value of this operation to the FBI?

Mr. OSBORN. I have never talked with the Federal Bureau of Investigation directly on the subject of the value of the product with them, but I have been present when numerous senior officials of the Agency have indicated that the Bureau thought it was an invaluable project, very valuable to them.

Senator HUDDLESTON. Do you know of any instances that were cited where it had been helpful to them in carrying out their responsibility?

Mr. OSBORN. Not specific instances, Senator, no.

Senator HUDDLESTON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator SCHWEIKER?

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Osborn, how did you do it? How did you open the envelope mechanically? Did you steam-kettle? What physically was done?

Mr. OSBORN. I never saw them opened, Senator. I saw the equipment they used, but I never saw them open it. I can only speculate that they

used steam and other sophisticated devices in which they were trained.

Senator SCHWEIKER. I wonder if you would turn to exhibit 5,¹ Mr. Osborn, the second memorandum dated December 22, 1971. I realize that this is a little bit outside of your immediate province, but because of your general knowledge in this area, I think you might be able to explain a few things. This is a memorandum from the project chief of HTLINGUAL, I assume, to some staff in the counterintelligence part of the Agency. And here it is saying, "Subject: Handling of Items To and From Elected or Appointed U.S. Officials. In accordance with new policy confirmed yesterday . . . no officials in the above categories are to be watchlisted."

Were officials such as Congressman or Senators or Governors prior to this memo listed?

Mr. OSBORN. Not to my knowledge, Senator. I have only one bit of information pertinent to this subject and that is that sometime in 1971—I think 1971—my deputy in charge of many areas—but this specific area, in New York in charge of field offices—brought to me a copy of a letter which I believe was to a Congressman and I can't recall who it was.

Senator SCHWEIKER. Is this when you hit the roof?

Mr. OSBORN. Yes.

Senator SCHWEIKER. All right, go ahead.

Mr. OSBORN. I took it up with the Director. It may—I don't know—it may have been the genesis of this memo.

Senator SCHWEIKER. And why did you hit the roof and what did you do about it?

Mr. OSBORN. Because I didn't think we had any business opening mail to Congressmen.

Senator SCHWEIKER. And you went to whom?

Mr. OSBORN. I showed it to Mr. Helms, I believe, I can't recall.

Senator SCHWEIKER. What did he say?

Mr. OSBORN. I can't recall.

Senator SCHWEIKER. Well, this memorandum says that from now on we will continue to intercept Government officials, elected or otherwise, but we will do it on the same basis as everybody else. They will be treated equally.

Mr. OSBORN. I first saw this memorandum yesterday, Senator.

Senator SCHWEIKER. Right; I realize this is not your immediate division. It says that we will not go out of our way to instruct people to pick them up, but we will not forbid them either, so that our chances are strictly at random. According to the figures, one out of every 13 letters sent overseas during that period to the Soviet Union was read or randomly opened. But it does set up a special procedure called a special category, whereby the normal channels were closed to VIP officials whose mail was opened, and it also sets up a procedure whereby it is not itemized. It is not listed, sort of like a "Do Not File" procedure, except that it goes to the Project Chief of Counterintelligence and then only the Deputy Chief of Counterintelligence and the Chief of Counterintelligence can decide if it is going to be disseminated further.

Are you familiar with any of this, or maybe indirectly aware that it was going on?

¹ See p. 199.

Mr. OSBORN. No, sir. No, sir. That's why I was shocked by the letter from the Congressman.

Senator SCHWEIKER. There is no doubt in your mind that—

Mr. OSBORN. Remember now, this project is located and run in the Counterintelligence Staff.

Senator SCHWEIKER. Yes, I recognize that.

Mr. OSBORN. And it is very closely held because of its sensitivity.

Senator SCHWEIKER. I think the interesting thing about the memo, which you obviously were not in a position to confirm, was that as recently as 1971 we were saying that it is okay to read Senators' or Governors' mail, but just do it in the regular channels and do not do it on a watch list. Do it at random. If we catch them, then we will read it and see if it is really worth passing on or not. And I guess it was not until 1973 that it finally got terminated.

Mr. Osborn, in terms of when the situation came to your attention, was that triggered by the 1971 complaint of the scientific group?

Mr. OSBORN. Yes, I think that's when it really began to get in focus.

Senator SCHWEIKER. What was your either knowledge or understanding about it prior to that time, if any?

Mr. OSBORN. I'm not quite sure I understand the question, Senator.

Senator SCHWEIKER. This 1971 complaint brought matters to a head and that is when you became aware of it; is that correct?

Mr. OSBORN. Right.

Senator SCHWEIKER. Is this to say you were not aware of mail openings prior to that time?

Mr. OSBORN. No; I was aware of mail opening in 1960 when I was Chief of the SR Division, and one of the consumers, and I became aware of it in September of 1963 when I became Deputy Director of Security. I became aware of Security's role in this project.

Senator SCHWEIKER. When matters came to a head, in terms of things being terminated, or at least raising a fuss over it, then you referred to that letter in the glassine envelope?

Mr. OSBORN. No. I related it more specifically to the letter Mr. Cotter received from the American Federation of Scientists. He called me about it and sent me a copy of the letter. I sent it to Mr. Karamessines. That is when the general—as far as I was concerned—the general activity to terminate or suspend the project was initiated.

Senator SCHWEIKER. Mr. Osborn, the FBI received a substantial amount of this material. Senator Church, you brought out the figures where they got a high proportion of material. If it was valuable to them, to your knowledge, why did the FBI not take it over?

Mr. OSBORN. I can only assume that—

Senator SCHWEIKER. What is your best estimate?

I realize, again, it is an indirect situation. But you did give some testimony.

Mr. OSBORN. I think no one in the Bureau would have gone to Mr. Hoover with it.

Senator SCHWEIKER. And did you not also—

Mr. OSBORN. And I think that's why they wouldn't take it over.

Senator SCHWEIKER. They were afraid Mr. Hoover would have said it was improper and illegal and would have forbidden the Agency to do that?

Mr. OSBORN. That would only be speculation on my part, Senator.

Senator SCHWEIKER. So they received the material, but they did not want to be responsible for getting it?

Mr OSBORN. That is correct. I think this is one of the things that irritated our Director.

Senator SCHWEIKER. In view of the fact that so much of this has gone on without necessarily the highest officials knowing, how do you recommend that we could insure in the future that something like this does not surreptitiously begin again, does not start up on the basis of a few people at the lower level making a decision? What is your recommendation as to how we can prohibit it on an absolute basis in the future?

Mr. OSBORN. I think the recommendations made by the Rockefeller Commission would be very useful and very helpful in eliminating this type of activity.

Senator SCHWEIKER. Are you referring to any particular part of their recommendation?

Mr. OSBORN. No. I happen to agree, generally, with most of them.

Senator SCHWEIKER. What is your concept of the proposal to have an inspector general, who has a lot more power and authority than the present Inspector General system, and would have access to almost any component of an intelligence apparatus, to see if they were following the law or were doing things that were either not in the charter or were not legal? As a person who is experienced in the general area of security, what is your reaction?

Mr. OSBORN. That is the one recommendation I have some reservations on as to its effectiveness. I would much prefer that the legislation governing the Agency be revised, be strengthened in very specific terms, delineating the Director's responsibilities, what he is to do and what he isn't to do. I am a little concerned about the idea of a super inspector general becoming ultimately an internal Gestapo, and I'm a little concerned with the divisive effect it would have on the morale of the Agency and its so-called effectiveness.

Senator SCHWEIKER. But here is a case where you had a letter, you saw a glassine envelope. You hit the roof, to use your own words. You talked to Mr. Helms; he apparently hit the roof, or was apparently upset.

Mr. OSBORN. He never hits the roof. I've never seen him hit the roof yet.

Senator SCHWEIKER. Maybe he just elevated his language a little bit. But the impression you gave us was he gave a negative reaction to the operation. Is that correct?

Mr. OSBORN. Yes; I think he was a little concerned. If I recall—it was a long time ago—but I think his reaction was one of concern.

Senator SCHWEIKER. Then how can you say we do not need a strong Inspector General or an authority of that nature to ferret out illegalities and prevent this kind of activity from happening? I am a little bit uncertain as to just how we do this, if it does happen, without some special authority of some kind.

Mr. OSBORN. Well, Senator, I think you can agree that the National Security Act of 1947 is, perhaps, in this day and time regarded—and I think properly so—as somewhat ambiguous. What we need is an act that is not ambiguous, that says that the Agency has no internal security functions, other than, hypothetically, the investigation and report

of its own employees, its applicants and so on. And I think if the legislation had been precisely that clear, perhaps, we wouldn't be in this situation.

Senator SCHWEIKER. Well, Mr. Osborn, I agree there are certainly some questionable areas of that particular law. We would certainly have to revise it.

On the other hand, the mail law is very clear. The mail law very specifically prohibits this kind of operation. And of all of the things we have seen before our committee, I think this is probably as specific a prohibition as we have come across. So whether it was in the charter—I happen to think it was in the charter, because I believe it was an internal security function whether it was to be performed. The mail law was very specific, and yet it did not get through the Director, because the Inspector General recommended abandoning it. If you do not give the Inspector General authority, how do you ever police the Agency?

Mr. OSBORN. I think it might include—far be it from me to teach a fox to suck eggs—but I thought you might include in such legislation something that the Director of the CIA shall have no authority to abrogate existing law, period. And it doesn't say that now.

Senator SCHWEIKER. No citizen has the authority to abrogate existing laws, if the law is clear and specific.

Mr. OSBORN. But no citizen also has the total authority to protect the intelligence sources and methods without defining what it means. I just think it is ambiguous. I think it could be much more direct.

Senator SCHWEIKER. I just honestly do not see how you are ever going to clean up an Agency without some kind of strong internal authority, like an inspector general. That is just one Senator's point of view.

That is all I have, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Senator Schweiker.

Mr. Osborn, were you in attendance on June 3, 1971, at a meeting in which Director Helms briefed Attorney General Mitchell and Postmaster General Blount on this mail-opening operation?

Mr. OSBORN. Was I present with Mr. Helms? No, sir; I was not.

The CHAIRMAN. Were you at a meeting at which Mr. Helms reported on his having briefed Mitchell and Blount?

Mr. OSBORN. Yes, sir; I was.

The CHAIRMAN. And do you remember what Mr. Helms said at that meeting?

Mr. OSBORN. I have the memorandum. I have had access to the memorandum reporting of the meeting, and to me it is an accurate representation of my recollection of the meeting, Senator.

The CHAIRMAN. And can you tell us, based upon your review of that memorandum, what Mr. Helms said concerning his briefing with Mitchell and Blount?

Mr. OSBORN. No, sir; I cannot recall that far back in specific words. The memorandum doesn't help me to remember that.

The CHAIRMAN. Let us turn to the memorandum [exhibit 4¹], that you represent as being an accurate document, and its paragraph 2, where it reads:

¹ See p. 197.

Mr. Helms stated that on Monday he had briefed Attorney General Mitchell on the operation. Note: Mr. Helms may have meant Tuesday, June 1, Monday having been a holiday. Mr. Helms indicated that Mr. Mitchell fully concurred with the value of the operation and had no hangups concerning it. When discussing the advisability of also briefing Postmaster General Blount, Mr. Mitchell encouraged Mr. Helms to undertake such a briefing.

And going on to paragraph 3:

The DCI then indicated that yesterday, the 2nd of June 1971, he had seen Postmaster General Blount. Mr. Blount's reaction, too, was entirely positive regarding the operation and its continuation. He implied that nothing needed to be done and rejected a momentarily held thought of his to have someone review the legality of the operation, as such a review would, of necessity, widen the circle of witting persons. Mr. Helms explained to the Postmaster General that Mr. Cotter, the Chief Postal Inspector, has been aware of the operation for a considerable period of time, by virtue of having been on the staff of the CIA's New York field office. Mr. Helms showed the Postmaster General a few selected examples of the operation's product, including an item relating to Eldridge Cleaver, which attracted the Postmaster General's special interest.

Now, based upon your review of this document and whatever memory you have of the occasion, was it clear to you that Mr. Helms had told the Attorney General and the Postmaster General about the actual letter openings, or had he told them simply about the mail recovery operation?

Mr. OSBORN. It is my recollection, which is particularly reinforced since he showed them examples of the operation's product, that he did tell them it involved opening. I cannot be positive of that, but I seem to recall it.

The CHAIRMAN. That is your best recollection?

Mr. OSBORN. My best recollection.

The CHAIRMAN. I think that is important for the record, in view of the witnesses we will have tomorrow.

I would like to ask you another question concerning Mr. McCone. It is our understanding that Mr. McCone has said that he knew nothing about the mail opening operation while he was Director of the CIA and that he heard about it for the first time just before he appeared before the Rockefeller Commission. I would like to ask you, Mr. Osborn, do you know if Director John McCone had full knowledge of these mail-opening programs while he was Director of the Agency?

Mr. OSBORN. No, sir, I do not.

The CHAIRMAN. You do not know?

Mr. OSBORN. No. I never discussed this particular activity with Mr. McCone. My tenure under Mr. McCone was very brief.

The CHAIRMAN. Would you have had to approve the program costs, as a part of the annual budget review, and would those figures have gone to the Director in the normal course of the CIA's procedures?

Mr. OSBORN. I would not have had to approve this. This was the particular responsibility of the Counterintelligence Staff and the Deputy Director for Plans, as it was known at that time. Budgetary figures, I am sure, went to the Director through Colonel White, who was Executive Director of Control that would generally handle the budget area exercises for the Agency.

The CHAIRMAN. Do you know whether or not the budget figures would have been broken down in such a way as to give knowledge of this program to anyone reviewing them?

Mr. OSBORN. No, sir. I would have no specific knowledge of that. I could speculate and assume they were, but that is pure speculation on my part.

The CHAIRMAN. Very well, I will not press it, then.

I have no further questions. If the committee has no further questions, I want to thank you very much. And I would announce that tomorrow we will have the former Postmasters General Day, Gronowski, and Blount, who served during the period. We also would have the former Chief Postal Inspectors Montague and Cotter as witnesses during the morning session. And in the afternoon session, we will call again on Mr. Richard Helms.

The hearing stands adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 12:44 p.m., the committee was recessed, to reconvene at 10 a.m. Wednesday, October 22, 1975.]

WEDNESDAY, OCTOBER 22, 1975

U.S. SENATE,

SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS

WITH RESPECT TO INTELLIGENCE ACTIVITIES,

Washington, D.C.

The committee met, pursuant to notice, at 10:08 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Mondale, Huddleston, Hart of Colorado, Goldwater, Mathias, and Schweiker.

Also present: William G. Miller, staff director; Frederick A. O. Schwarz, Jr., chief counsel; and Curtis R. Smothers, counsel to the minority.

The CHAIRMAN. The hearing will please come to order.

Today the committee continues its investigation of the mail-opening program, endeavoring to determine in depth how it happened that for 20 years mail was opened by the CIA and the FBI, contrary to the laws of the United States.

Yesterday, we heard from members of the Inspector General's Office of the CIA, an office that conducted periodic reviews of this program and an office which concluded that it was of marginal value, in terms of the intelligence collecting, so much so that it was recommended to the Agency, finally, that the program either be discontinued or turned over to the FBI. There was little expression of concern about its illegality, but there was evident fear that the exposure of the program would make for a considerable embarrassment to the CIA. On that basis, it was explained, particularly in the wake of Watergate, the recommendation was made that the CIA discontinue a program that had had little intelligence benefit.

Today, we are continuing to pursue the matter by asking former Postmasters General of the United States what they were told about the program and to what extent they approved it since it was their responsibility under the law to protect the integrity of the land.

For that purpose, our first witnesses are three former Postmasters General, Mr. J. Edward Day, Mr. John A. Gronouski, and Mr. Winston M. Blount.

I shall ask all three to come forward and sit as a panel for purposes of questioning. If you gentlemen will do that now. Please remain standing and take the oath.

Do you and each of you solemnly swear that all of the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DAY. I do.

Mr. GRONOUSKI. I do.

Mr. BLOUNT. I do.

The CHAIRMAN. Thank you very much.

Mr. Schwarz will commence the questioning.

**TESTIMONY OF J. EDWARD DAY, FORMER POSTMASTER GENERAL,
ACCOMPANIED BY JAMES F. REILLY, SR., COUNSEL; JOHN A. GRO-
NOUSKI, FORMER POSTMASTER GENERAL; WINTON M. BLOUNT,
FORMER POSTMASTER GENERAL, ACCOMPANIED BY DOUGLAS
ARANT, COUNSEL**

Mr. SCHWARZ. Are any of you gentlemen accompanied by counsel?

Mr. DAY. Yes; I am, by Mr. James F. Reilly.

Mr. BLOUNT. I am, by Mr. Douglas Arant.

Mr. GRONOUSKI. I am not.

Mr. SCHWARZ. Before questioning these particular people, may I call the committee's attention to a chart which is headed, "Postmasters General," and which sets forth the names and dates in offices of all of the Postmasters General from the commencement of this program to date, indicating in the right-hand column whether or not there is any evidence whatsoever, or any claim on behalf of either the CIA or the FBI, that anything was disclosed [exhibit 6¹].

Mr. Summerfield, of course, is dead. We will deal with the subject of disclosure and what kind of disclosure was made to him when Mr. Helms testifies.

Mr. Day is here as a witness. Mr. Gronouski, who was not informed, is here as a witness. Mr. O'Brien and Mr. Watson have testified they were not informed, and there was no claim made that they were informed. Mr. Blount, of course, is here as a witness. And Mr. Klassen, who succeeded him, was not informed, and there is no claim made that he was informed.

I am going to start with Mr. Gronouski.

The CHAIRMAN. First of all, Mr. Schwarz, is this summary based upon the testimony that has heretofore been obtained in executive session?

Mr. SCHWARZ. The testimony and the documents, yes.

The CHAIRMAN. So that this summarization can be distributed to the press?

Mr. SCHWARZ. It can be and has been.

The CHAIRMAN. And can be authenticated as based upon sworn testimony in executive hearings?

Mr. SCHWARZ. Yes. Moreover, in every case where it says "not informed," there is no claim made by either the CIA or the FBI that the persons so named were informed.

Mr. Gronouski, I am going to start with you and explain why you are here, even though you were not informed, because you have an important story to tell the committee.

You were Postmaster General in the period 1963 through when?

Mr. GRONOUSKI. November of 1965.

Mr. SCHWARZ. Now, during the time you were Postmaster General, was there an investigation into generally the subject of privacy by a Senate subcommittee, headed by Senator Edward V. Long of Missouri?

Mr. GRONOUSKI. Yes. The Long committee on mail coverage.

Mr. SCHWARZ. And in connection with that, did you submit information to the Long committee on the subject of mail?

Mr. GRONOUSKI. Yes, I did.

¹ See p. 202.

Mr. SCHWARZ. What did you tell them?

Mr. GRONOUSKI. Well, after reading the Rockefeller Commission report and noticing my name mentioned, I tried to figure out what testimony I had given before the Long committee, because my recollection was that I had never testified before the Long committee. But I got out some of those old hearings and I found a couple of letters that I had submitted and were in the record.

One letter had to do with explaining a relationship that had existed by law with the IRS, having to do with the treatment of mail as personal property which could be seized by the IRS at the time they had a judgment against a taxpayer who had not paid his taxes. I discovered this, and Lord knows I did not remember this from my recollection. I reread the letter of August of 1964, which was about 6 or 8 months before the Long committee was in existence, that developed this question.

This disturbed me no end, because of the main thing that one who gets involved with the Postal Service feels the bottom line is the sanctity of the mail, both in terms of no interruption of delivery and opening the mail. And obviously this was a violation. It was an illegal violation of what I thought was fundamental. So I wrote a letter to the Long committee, recommending—oh, I informed them that on noticing that and learning of this, in August of 1964, I called Doug Dillon, who was then Secretary of the Treasury, and we personally agreed to put in—to stop the practice. And, subsequently, Joe Bower agreed on this, too.

But this, of course, was a personal agreement, and there was a law still on the books which made it legal for this to happen. So in this letter, I recommended to the Long committee that they change the statute to prohibit the treatment of mail as personal property subject to IRS lien. I can't for the life of me remember what they did about it, but I offered them the use of two Post Office attorneys to help them draft legislation.

The other letter had to do with my refusal to submit to the Long committee a list of all of the mail covers that had occurred over the last 2 years. And I explained the reason for that refusal that was related to the fact that so many people who had been subject to mail covers were totally innocent of any concern by a Government agency.

Mr. SCHWARZ. When you say "mail cover", that is the examination of the exterior of an envelope and not the opening of it?

Mr. GRONOUSKI. That's right. And in that letter I specifically defined mail cover, and it is the only item that I think the CIA memorandum could have referred to that I know of. I explained that, very clearly, it was not delaying the mail, looking only on the outside, recording and not opening the mail or delaying it.

I might say, also, I explained how a year earlier, I had been concerned about mail covers also and had put in very tight restrictions on the authorizations of mail covers. That is my recollection.

Mr. SCHWARZ. In any event, in that letter, which was largely about the subject of mail coverage, you indicated that there was no mail opening program going on?

Mr. GRONOUSKI. That's right. I flatly stated there was not.

Mr. SCHWARZ. And that you did not know about mail openings, did you?

Mr. GRONOUSKI. I did not know about it.

Mr. SCHWARZ. All right.

Mr. GRONOUSKI. Except I was not sure in August of 1964 what the lien by the IRS meant. It did stop the mail, because it prevented the delivery to the addressee, and I had some presupposition that they stopped it and took it to collect taxes. They probably hoped that there was some money in it, and that very much concerned me, and that's when I put a stop to it.

The CHAIRMAN. But did you know during that period that the CIA was busily engaged in opening the mail?

Mr. GRONOUSKI. I did not.

The CHAIRMAN. Your only concern, then, was with what you knew about the IRS? That was legal at the time, and you recommended that the law be changed?

Mr. GRONOUSKI. And administratively the practice was changed immediately.

The CHAIRMAN. And you recommended a change in the law that would make it illegal, and within your Department you ordered administrative changes that stopped the practice?

Mr. GRONOUSKI. An agreement with the Treasury Department.

Mr. SCHWARZ. Mr. Chairman, at this point I would like to read into the record from exhibit 7,¹ what the CIA subsequently said about Mr. Gronouski, in a memorandum for the files dated April 23, 1965. This supports your view, Mr. Gronouski. It does not change anything. It is interesting in what it shows about the attitude of the CIA.

Reading from paragraph 7 into the record:

Mr. Karamessines brought up the question of what persons outside the Agency have been briefed as to the actual operations of HTLINGUAL. He was told that, at the present time, there were no officials in the post office or elsewhere in the Government who had been so briefed. Karamessines suggested that consideration be given to possibly briefing Postmaster General Gronouski after the [Long] subcommittee activity has been discontinued. The writer stated that he would recommend against this in view of various statements by Gronouski before the Long subcommittee. Karamessines agreed with this thought and suggested that, in his opinion, the President would be more inclined to go along with the idea of the operation.

And we are going to take that up with Mr. Helms this afternoon, that part of the document.

Well, Mr. Gronouski, unless you have got something further to say about your reaction to the treatment you now know you received, I am going to pass to the other witnesses.

Mr. GRONOUSKI. I just wanted to add that when this news broke, I thought it was incredible that a person in a top position of responsibility in Government in an agency should have something of this sort that is very illegal going on within his own agency and did not know about it. It is not that I did not try to know about these things. I think it is incumbent upon anybody at the top office to try to know everything that goes on in his organization.

And to that effect, long before the Long committee, I asked Mr. Montague and also my information officer, Ira Kappenstein, to very carefully investigate the mail cover and any other associated problems that we had, all the way from pornography to what have you, to find

¹ See p. 203.

out what was going on, what we did, and whether it was in conformity, not only with the law, but in good administrative practice.

And I think it is incredible that I could have held that office for only the short time of 2½ years, in the middle then—during an investigation of mail coverage, that no how, no way did any information seep up to me. And I think that is a very serious concern.

The CHAIRMAN. I do, too.

Mr. SCHWARZ. Mr. Day, when did you hold the position of Postmaster General?

Mr. DAY. January 21, 1961, until August 9, 1963.

Mr. SCHWARZ. Was there a time when Mr. Helms and Mr. Roosevelt and Director Dulles came to visit with you about the subject of CIA and mail?

Mr. DAY. They came to visit me, yes, on February 15, 1961, about 3 weeks after I took office.

Mr. SCHWARZ. All right. There is a document in your book which is exhibit 8,¹ dated February 16, 1961, the day after—

Mr. DAY. I don't have any book of that kind.

Mr. SCHWARZ. Mr. Blount can show it to you. It is right there. This is a CIA document, written by Mr. Helms, reflecting the fact of the meeting and stating in the second sentence of the paragraph, "We gave him the background, development, and current status, withholding no relevant details."

To your recollection, were you told that the CIA was opening mail in New York City?

Mr. DAY. No.

Mr. SCHWARZ. Do you deny that you were told that, or is it simply that you do not recollect it?

Mr. DAY. I don't recollect it. And I do have several very distinct recollections of that meeting, which are inconsistent with this memorandum of Mr. Helms.

These three gentlemen came to see me. I knew Mr. Roosevelt from past years. Mr. Dulles, after some preliminary visiting and so on, said that he wanted to tell me something very secret, and I said, "Do I have to know about it?" And he was somewhat taken aback by that. And he said no.

I said my experience is that where there is something that is very secret, it is likely to leak out, and anybody that knew about it is likely to be suspected of having been part of leaking it out, so I would rather not know anything about it.

What additional things were said in connection with him building up to that, I don't know. But I am sure, from my recollection of that meeting, and, actually, from other things in your own record, that I was not told anything about opening mail.

Mr. SCHWARZ. What are the other things you refer to?

Mr. DAY. Well, for example, there is the memorandum, I believe you read part of it, that was prepared by the CIA staff before they came to see me. They really were laying for me. I barely found out where my office was when they came over there. It said, if the Postmaster General asks if any mail is being opened, tell him that it is being opened. Well, obviously, I didn't ask them if any mail was being opened.

¹ See p. 205.

Also, there is the subsequent memorandum that indicates that I was not told. I don't know what that subsequent memorandum said specifically, because I have not had an opportunity to see it.

Also, I can't see, thinking back on this situation, why I would so clearly recall that I told them that I did not want to know about this if they had already told me about it. It doesn't make sense. As far as Mr. Helms' statement that I said I did not want to be told the details, what are the details? If they had said they were opening mail, that they were opening mail, that would have been the details.

Mr. SCHWARZ. So the thrust of your testimony—and this is based, you say, upon a clear recollection—is that Mr. Dulles said it was highly sensitive or secret. You said, "I am worried about leaks. And, therefore," you said "please do not tell me."

Mr. DAY. Correct.

Mr. SCHWARZ. Even though you knew it was a matter which significantly concerned the Department for which you were responsible?

Mr. DAY. Of course.

Mr. SCHWARZ. All right. One further question to you, Mr. Day. Did the FBI ever tell you they were opening mail?

Mr. DAY. No.

Mr. SCHWARZ. Did they ever discuss with you the subject of mail covers?

Mr. DAY. They may have. All kinds of important people seemed to come to see me or send for me immediately after I was appointed. Mr. Hoover came over and had lunch with me.

As I recall that conversation, it was largely about the importance of a close working relationship between the Postal Inspection Service and the FBI and law enforcement activities in general. It is conceivable he might have mentioned that. I have no recollection of it. I doubt very seriously if I knew what a mail cover was until some weeks after I took office.

Mr. SCHWARZ. You mean he came in and he also just told you something, and you did not find out what he was talking about?

Mr. DAY. No; he was talking—it was a meeting in which he wanted to be sure that I was sympathetic with the cooperative activities between the Postal Inspection Service and the FBI and wanted to see that I had the right attitude, which I did, about working with them cooperatively on their law enforcement efforts. And as I say, I don't recall him saying anything about mail covers. I can't say definitely that he didn't, and if he did mention it in passing, I probably didn't even know what he was referring to.

Mr. SCHWARZ. All right. Mr. Blount, did you ever have a meeting with Mr. Helms in which the subject of a CIA project relating to the mails was discussed?

Mr. BLOUNT. Yes, I did.

Mr. SCHWARZ. Did that meeting take place in June of 1971?

Mr. BLOUNT. Yes, it did.

Mr. SCHWARZ. What did Mr. Helms tell you?

Mr. BLOUNT. Well, as I recall, Mr. Helms explained to me about a project that he told me had been going on for a great number of years. I don't know whether he said 15 years or what, but there was some indication in my mind that this had been going on for at least 15 years, that it was an ongoing project. It was a project of great sensitiv-

ity and great importance to the national security of this country and that he wanted to inform me about it.

I don't recall this being a very long meeting. I guess my memory is not as good as Mr. Day's but this was over 4 years ago, as far as I was concerned, and I hadn't thought much about this until all of this matter came up this spring. I hadn't thought at all about it.

But my best recollection is, he told me this was a project in which the Post Office was cooperating with the CIA, that there were a couple of postal employees in New York City that I believe he told me were the only ones who really were involved or knew about this project, that the way in which it operated was that the postal employees would remove from the mail stream letters going to the Soviet Union and give it to two or three CIA employees, and whatever they did with it, it was reintroduced into the mail stream the next day. That's about the ending of my recollection.

Mr. SCHWARZ. Did you not ask them what they did with it?

Mr. BLOUNT. No, I don't recall doing that.

Mr. SCHWARZ. Did he not tell you what they did with it? Is it not a fact that he told you that the CIA was opening the mail in New York City?

Mr. BLOUNT. Not to my recollection.

Mr. SCHWARZ. Well, now, did you not raise with him the question of legality?

Mr. BLOUNT. Yes, I did.

Mr. SCHWARZ. Why would you have raised the question of legality with him unless he had told you that the CIA was opening the mail in New York City?

Mr. BLOUNT. Well, I think, Mr. Schwarz, this is a perfectly legitimate and obvious thing for a prudent man to do.

Mr. SCHWARZ. But as you describe it, he just came in and gave you a vague description. I don't understand why, on the basis of your description of the conversation, there would have been any reason to raise the question of legality, which you admit you did do.

Mr. BLOUNT. Well, maybe you don't, but I do.

Mr. SCHWARZ. What is the reason?

Mr. BLOUNT. Well, just let me tell you. Mr. Helms was the Director of the CIA. He is the man who had and continues to yield long and distinguished service to this country. I had great respect for him and have great respect for him. He was telling me about a matter, a secret matter, of great importance to this country. I don't recall talking very much about the details about it. I didn't ask him what they were doing.

I asked him—I raised the question of legality. I raised the question of bringing, as I recall, the General Counsel of the Post Office Department into the meeting, and as I recall, Mr. Helms said that the Attorney General was going to be involved in the case.

I have seen from testimony by Mr. Helms and documents that he had seen the Attorney General prior to the meeting with me, and I have no quarrel with that. I had assumed he was going to see the Attorney General, but if he had seen the Attorney General, well, I find it even more logical, and that the Attorney General had no problem with that as far as the legality was concerned, and I thought then

it was a project that I wanted to give full cooperation with the CIA within the limits of the law.

Mr. SCHWARZ. Well, it doesn't make any sense to me, but you have your explanation on the record. I don't see, according to your explanation of the conversation, why there is any reason to discuss legality, which you agree was discussed.

Mr. Chairman, I do not have anything further.

Senator MONDALE [presiding]. Mr. Smothers?

Mr. SMOOTHERS. Thank you, Mr. Chairman.

Just briefly, back to Mr. Day, if we might, for starters.

Mr. Day, at the time Mr. Dulles and Mr. Helms came to see you, you have a pretty clear recollection of your indication that you did not want to be made privy to secret matters that might leak. Do you have any other recollection of the subject of that conversation?

Mr. DAY. No, I don't recall the subject of that conversation. There was some purely social talk because of the fact that I had known Mr. Roosevelt during Navy days, and I don't recall the specific statements that were made. It is not surprising to me because I am more inclined to remember things about people and my reactions to them than I am to remember all of the details of some conversation, and I can recall that very distinctly, my reaction to their approach.

Mr. SMOOTHERS. Is it your recollection that this visit was a social call?

Mr. DAY. Oh, no, of course not.

Mr. SMOOTHERS. I am a little concerned. The Director of the CIA comes out to chat with you about a matter of some importance to your Department, and all you recollect from that is that you asked him not to tell you about it?

Mr. DAY. That is correct. And I have explained previously why that is true. I would do it exactly the same way if I were doing it today. I figured then that the CIA had their own lines of authority and their own responsibilities, and I had absolutely no control over them, any more than I did over the Air Force.

Mr. SMOOTHERS. Even if they were opening mail, for which you were responsible?

Mr. DAY. I don't know. The thought of opening mail didn't enter into my mind, because I didn't hear anything about it that I can recall.

Mr. SMOOTHERS. To what would this authority on their part have related?

Mr. DAY. Probably, as I began thinking about it afterward, it probably had to do with the extent of the mail covers that the CIA was using. That is what I thought later might have been the purpose of the visit.

Mr. SMOOTHERS. Yes; but going back to the conversation and why, if at all, it made any sense, you previously indicated that you had no idea at that time even what a mail cover was.

Mr. DAY. That is correct. I said afterwards, when I began surmising what they might have been coming to talk to me about, it struck me that it was probably mail covers.

Mr. SMOOTHERS. I understand the surmise afterwards. What I am concerned about is what kind of strange conversation this must have

been at the time. You have a specific recollection about a very small part of it, the part that indicated that you did not want to know anything. But what did you talk about?

Mr. DAY. I didn't say it was a very small part of it. I said that there was a certain amount of conversation with Mr. Roosevelt and undoubtedly some get-acquainted conversation. I have stated that I do not recall the statements that were made as a buildup to the statement they wanted to tell me something very secret. But I do recall what my reaction was, and I told them I did not want to know anything about it.

Mr. SMOTHERS. Mr. Day, in your assessment, and with the information that you now have as to the subject matter which would have been discussed with you, is it your impression that you were simply duped in this process, or was it more a case of your saying hear no evil, see no evil?

Mr. DAY. Neither one. It wasn't my responsibility. The CIA had an entirely different kind of responsibility than I did. And what they had to do, they had to do. And I had no control over them. I don't know whether it was clear to me at the time they came to see me, but it is clear they did not come to ask me if they could do something; they came to tell me it was happening. And that was their responsibility. I don't recall over that.

Mr. SMOTHERS. And it was your view that the CIA could do whatever they wanted to with the mails, and it was your further view that you would hope they wouldn't tell you about it?

Mr. DAY. I don't know if I particularly focused at the time on thinking they could do whatever they wanted to, because I didn't know the various alternatives of things they might be doing. But as I developed more knowledge of the situation—and right now I am not at all sure it was illegal for them to open the mail.

Mr. SMOTHERS. Let me turn to Br. Blount for just a moment.

Mr. Blount, going back to your meeting with Mr. Helms, is it your recollection that at that meeting Mr. Helms discussed the mail of specific persons that had been opened?

Mr. BLOUNT. I have seen testimony that the name Eldridge Cleaver was mentioned in the conversation, and I seem to recall that name being mentioned.

Mr. SMOTHERS. Did you discuss the contents of Eldridge Cleaver's mail?

Mr. BLOUNT. I don't recall that.

Mr. SMOTHERS. Did he tell you anything about what the Agency might have learned from opening Eldridge Cleaver's mail?

Mr. BLOUNT. I don't recall him talking about opening the mail, Mr. Smothers, and I don't recall his talking about what they had learned from it. I recall the name being introduced into the conversation, and these were as an example of the kind of mail that would be interrupted.

Mr. SMOTHERS. By example, are you saying that he showed you samples of mail that had been opened?

Mr. BLOUNT. I don't recall any of that. I am talking about the example of the kind of people whose mail was valuable to interrupt as far as the CIA was concerned.

Mr. SMOTHERS. What kind of people are we talking about?

Mr. BLOUNT. Well, people that were avowed, in my view, at any rate—who had vowed they were enemies of this country.

Mr. SMOOTHERS. So if the CIA determined that someone was an enemy of the country, in your view it was all right for the Agency to open the mail?

Mr. BLOUNT. I did not say anything about opening the mail, Mr. Smothers. I raised the question of the legality of the CIA operations. This matter was disposed of in my mind by the fact that the Attorney General had agreed, or was going to agree, or was going to be briefed about this matter, and he would deal with the legality of it. I understand he had been briefed prior.

Mr. SMOOTHERS. Did you ever speak to the Attorney General about this matter?

Mr. BLOUNT. I don't recall any specific conversation with the Attorney General. I may well have said something to him in passing. I had many conversations with him. I just don't recall.

Mr. SMOOTHERS. Did you ever raise the matter with your counsel at the Post Office Department?

Mr. BLOUNT. I talked about, during this meeting, of bringing in the counsel of the Post Office Department. And when it was indicated that the Attorney General was going to be involved in this, I decided to let the Attorney General handle the legality of it.

Mr. SMOOTHERS. In other words, after this briefing, after being told effectively that the mail of certain persons was being opened—

Mr. BLOUNT. I don't recall that, Mr. Smothers.

Mr. SMOOTHERS. OK, depending on what impression you drew from the conversation regarding Cleaver's mail, one may or may not conclude that you had such knowledge, but certainly you knew there was a CIA project relating to the mails and that the CIA was using this as a source to get some kind of information; you knew that much.

Mr. BLOUNT. That is precisely what my impression of the meeting was.

Mr. SMOOTHERS. Did you do anything after this knowledge had come to you? After you had been advised of this much, was there any follow-up on your part to find out what the Agency or the FBI was doing, or what anyone else was doing in this regard?

Mr. BLOUNT. I don't recall that. I have seen testimony that I called Mr. Cotter who was the Chief Inspector and related the fact that we had such a meeting. I don't recall that conversation. I could well have had it. I had many conversations with Mr. Cotter, but I simply don't recall it.

Mr. SMOOTHERS. I have nothing further, Mr. Chairman.

Senator MONDALE. Thank you very much.

Mr. Blount, according to a memo, which I gather you have seen, dated June 3, 1971, exhibit 4,¹ the following is a statement:

The DCI then indicated that yesterday, 2 June 1971, he had seen Postmaster General Blount. Mr. Blount's reaction, too, was entirely positive regarding the operation and its continuation. He opined that "nothing needed to be done" and rejected a momentarily held thought of his to have someone review the legality of the operation as such a review would, of necessity, widen the circle of unwitting persons. Mr. Helms explained to the PMG that Mr. Cotter, Chief Postal Inspector, has been aware of the operation for a considerable period of time by virtue of having been on the staff of the CIA's New York Field Office. Mr. Helms showed

¹ See p. 197.

the Postmaster General a few selected examples of the operation's product, including an item relating to Eldridge Cleaver which attracted the Postmaster General's special interest.

Would you disagree with any part of that memo?

Mr. BLOUNT. Senator, I don't recall seeing any document. As to Eldridge Cleaver, I do remember the name being introduced into the conversation.

I do not recall any conversation about Mr. Cotter. I simply don't recall it. I mean, it may well have been in the conversation. Again, I don't recall a conversation with Mr. Cotter after this meeting. I have seen testimony by Mr. Cotter that I did call Mr. Cotter. I don't have any quarrel with it; I just don't recall it. And I don't recall anything in this meeting about Mr. Cotter's name being mentioned or being shown any documents.

Senator MONDALE. Is it your testimony, then, that you do not recall being told that the mail was opened?

Mr. BLOUNT. That is correct.

Senator MONDALE. And further, that you never saw any byproduct of such opened mail?

Mr. BLOUNT. I don't recall either of those two things, Senator.

Senator MONDALE. And that your only inquiry, based on this general discussion with DCI, was in effect asking to be sure that it was legal?

Mr. BLOUNT. In effect, that is correct.

Senator MONDALE. As I understand your earlier testimony, you did so because you thought this effort, although not defined for the use of the mails, involved the Nation's security and therefore a higher purpose that would justify it.

Mr. BLOUNT. I don't know what you mean by justify, but I understood that national security was involved, and this was a very sensitive project as far as the CIA was concerned, and that it was important to this country. And my inclination was, and is today, to be fully supportive as long as this matter was legal.

Senator MONDALE. As long as it's legal.

Mr. BLOUNT. And that's the reason I raised the question of legality. And it was disposed of in my mind by the fact that the Attorney General was going to be involved in the legality of it. So I thought that the General Counsel of the Post Office Department should not be involved as long as the Attorney General was going to be involved.

Senator MONDALE. So you would support any national security effort that was legal. But in this case, even though you knew it affected the operation of your Department and had something to do with the mails, you did not ask what it might be or inquire on your own as to the legality; is that correct?

Mr. BLOUNT. My recollection, Senator, is that the extent of the Post Office involvement was to interrupt the mail stream and to turn it over to CIA agents who would then turn it back to the postal employees the next day.

Senator MONDALE. After having read it?

Mr. BLOUNT. I don't know what they did with it, and that is when I raised the question of legality.

Senator MONDALE. But you didn't ask what they were doing with it, either?

Mr. BLOUNT. I did not.

Senator MONDALE. All right. And you didn't—

Mr. BLOUNT. I don't recall that.

Senator MONDALE. You might have asked?

Mr. BLOUNT. I just don't recall. I don't recall any conversation about opening the mail.

Senator MONDALE. But you might have asked. Do you think that you did not ask or that you did ask or that you can't remember?

Mr. BLOUNT. I don't think I ought to speculate as to what I might have asked. I just don't recall.

Senator MONDALE. You may or you may not or you don't recall?

Mr. BLOUNT. I don't recall any discussion.

Senator MONDALE. In any event, you did not inquire as to the legality itself, you inquired, rather, whether they had—

Mr. BLOUNT. Based on the testimony that Mr. Helms has given to others, including this committee, he saw the Attorney General prior to coming to me. I have no quarrel with that. I accept the fact that he saw him prior to coming to me. I had first thought that he was going to see the Attorney General after our meeting. I accept the testimony that he saw him before our meeting, and I am quite certain that he said to me that he had briefed the Attorney General and that the Attorney General had no problem with this matter and that as far as the legality was concerned, that put it to bed, as far as I was concerned.

Senator MONDALE. All right.

Sir, we all take an oath of office—you do, I do, as we go into public office—to faithfully uphold and execute the laws of the land. Do you feel that this use of the U.S. mail should not have raised your curiosity as to what in fact was happening so you would ask those essential questions and having asked them, that you had a duty then, under your oath of office, to execute the law?

Mr. BLOUNT. Well, Senator, just as Mr. Day has testified, I didn't know then, and I don't know now, that what the CIA was doing was illegal.

Senator MONDALE. My point is, you did not ask, apparently, and having not asked, you did not inquire as to its illegality; I was wondering how that squares with one's oath of office which requires us to faithfully execute the laws of the land.

Mr. BLOUNT. I raised the question of legality, and as far as I was concerned, it was settled with the Attorney General dealing with the legality of the matter.

Senator MONDALE. Now, Mr. Day, as I understood your testimony, Mr. Helms, then the DDP, and Mr. Dulles, came to you and said that we have a secret matter to discuss with you affecting the Postal Department. And your attitude was, or your statement was, "Do I have to know? Because when secrets are known then the disclosures can be blamed on the people who knew the secrets." Therefore, you did not want to know. We have heard a lot of that, not just in the executive, but in the Congress.

Maybe if I had been in your position at that time I would have said the same thing. I am not trying to draw moral judgments about it. We had direct statements of Senators back in the early days, when confronted with embarrassing information, that they didn't want to know.

That seems to be the way you dealt with the CIA and the FBI in those days: "Don't tell me, I don't want to know." Do you think that was the right attitude?

Mr. DAY. I definitely do. As I say, I would do the same thing again. I would not agree that it is comparable to embarrassing information. As I said, I felt the CIA had their own lines of authority and their own responsibilities, and they were the ones that knew what they couldn't do.

Senator MONDALE. And so did you. You were the Postmaster General.

Mr. DAY. That's correct.

Senator MONDALE. You had taken an oath to uphold and faithfully execute the laws of the land. Like Mr. Blount, who didn't ask the questions, you didn't want to hear and you wouldn't ask.

I don't want to sound personal, because I think that was the general attitude in those days, but I was wondering now, in the light of what we have seen, the gross illegality that was going on, and the warranted opening of mails which was clearly illegal, I don't think anybody—

Mr. DAY. I disagree with—

Senator MONDALE. Now that you know that, do you think that—

Mr. DAY. I don't agree that it is clear that it is gross illegality, but that is another subject.

My feeling then and my feeling now is that the CIA had overall powers that put them in a different situation than other people, and I think actually, on the law itself, it is not at all clear it was illegal.

Senator MONDALE. That is the first time we have heard that, Mr. Day. The law, I think, is very clear. In order to open mail, you have to do it under court warrant and on the basis of probable cause. Your position is that if you invoke the term national security, you can open anybody's mail.

Mr. DAY. Not just invoking the term national security, but the CIA is and always has been something very different and very special.

Senator MONDALE. We are both lawyers. I do not remember reading that in the Constitution; maybe you can tell me about that exception in the fourth amendment.

Mr. DAY. There is a specific section of that statute, Title 18, U.S. Code, Section 1717, saying it is illegal to send things through the mail that have to do with advocating the overthrow of the Government. And up until shortly before—

Senator MONDALE. And that is probable cause. In other words, if you have probable cause—

Mr. DAY. Well, that is not in that section.

Senator MONDALE. If you feel that somebody is advocating the overthrow of the Government, you can get a warrant and you can open the mail.

Mr. DAY. That is not in that section I am referring to. What I was going to continue, that section I have long since found out, shortly before I was Postmaster General that section 1717 had a provision, right in the same section about the national security, saying that mail should not be opened. And that was stricken out in August 1960 by the Congress.

Senator MONDALE. Well, I must say that the testimony I have just heard from you, Mr. Day, and from Mr. Blount, scares me more than

I expected. Not only have we found gross and unconscionable interference with the mail which threatens the civil liberties of every American, but we have the testimony from two former Postmasters General that they do not think it is wrong, even today.

Mr. GRONOUSKI, in your case, you were not told of these openings, even though you wanted to know. We now know, from a private memorandum of the DCI, that it was decided not to tell you. How can a Postmaster General who wishes to enforce the law do so in that kind of environment?

Mr. GRONOUSKI. Well first—

Senator MONDALE. And how do we know whether the present Postmaster General, if desirous of enforcing the law, can be sure such abuses are not going on today?

Mr. GRONOUSKI. First, Mr. Chairman, if I may I want to disassociate myself with the generalization which you opened your remarks with that in those days it was the general attitude. That was not my attitude and I deplore that attitude.

Senator MONDALE. And I commend you.

Mr. GRONOUSKI. I think anyone in Government that runs an agency has the responsibility of finding anything going on in that agency, and I am terribly upset that the system is such that what happened could happen, because I made every effort to find out what was going on in my agency.

Senator MONDALE. And I commend you.

Mr. GRONOUSKI. And I cannot tell you how to do it either. I wish I could tell you.

Senator MONDALE. Would it be fair to say that you tried, you did not get the answers, and you now find—

Mr. GRONOUSKI. The first moment I learned that according to law and in accordance with law that the IRS was stopping and holding mail, I immediately called the Secretary of the Treasury and, with him, agreed to stop it in 1964. I investigated everything involving the mail that was humanly possible and if I had any idea that the CIA or any other agency was not only opening the mail but delaying the mail, I would have, as I did in the case of the IRS, put a stop to it.

Senator MONDALE. That is why I have always liked John Gronouski. If that attitude had prevailed, we would not have had this mess that we are exploring today, and we would not have had a Watergate, and we would not have gone through this tremendous morass of cynicism and despair that we have suffered. It is a little simple thing called obeying and enforcing the law. And that is what I thought I heard and I commend you for it.

We have a vote. We suspend the hearings until after we vote.

[A brief recess was taken.]

The CHAIRMAN [presiding]. The hearing will come back to order.

Between votes and another hearing over which I have had to preside this morning, I have missed some of the testimony. I do want to say, however, that I have been told of testimony given just before the break for the vote by former Postmaster General Gronouski, and I simply want to strongly associate myself with the view he expressed.

Either we are going to have a Government of laws in this country that is obeyed by all agencies of the Government, or we are going to

have the beginning of a slide that could undermine all individual liberty in this land. We have to recognize the crossroad and take the right road before it is too late.

Senator MONDALE. Could I ask just one question?

The CHAIRMAN. Yes. Senator Mondale.

Senator MONDALE. How does it feel now to know that you were permitted to represent something to the Congress which you then thought to be the truth—namely, that it was only mail cover operations and nothing else—when, in fact, you have now learned that that was not the truth?

Mr. GRONOUSKI. Well, when I heard it, of course, I was indignant and frustrated. And it poses, I think, the real gut issue of government, how you get control of this business. And I thought I had reasonable control when I was in the Post Office. I thought I knew what was going on.

Senator MONDALE. This not only undermines—

Mr. GRONOUSKI. Obviously, I didn't know something very important.

Senator MONDALE. But more than that, they let you represent something to the Congress that you believed to be true but in fact was false, thereby misleading the Congress as well.

Mr. GRONOUSKI. Beyond that, I—it meant a great deal—the proposition of those around me, not only those I appointed, but those who had been Post Office employees before I came there didn't know about that. I may in testimony be dissuaded of that, but I don't think any of the people that I dealt with—the Chief Inspector, legal counsel, or the Assistant Postmasters General—had any notion of this. It was not just me. It seems to be the whole top staff didn't know anything about it.

Senator MONDALE. Thank you, Mr. Gronouski.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Mondale.

I believe Senator Schweiker is next.

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

I would like to address a question to all three of you in sequence. My question basically concerns this: In listening to your testimonies here this morning, I guess you could summarize your three statements with three other statements. One would be, I don't recall. Second would be, I don't want to know. The third would be, I didn't know they were actually opening the mail.

My question is in two parts. First, what is a Postmaster General for, if not to guarantee the sanctity of the mail? Second, where did the responsibility in your particular administration break down?

Mr. Day, let us start with you. What is a Postmaster General for if he is not to guarantee the sanctity of the U.S. mail?

Mr. DAY. My main concerns when I was Postmaster General, and particularly when I first came in, was to straighten out the very bad employee relations in the Department, to attempt to improve service, and to improve postal facilities. The law enforcement aspect of the Postmaster General's job is rather a peripheral part of that job.

Senator SCHWEIKER. Where do you feel your responsibility broke down?

Mr. DAY. I don't think it did break down at all.

Senator SCHWEIKER. Now, Mr. Day, how can you say that?

Here we see a case of mail opening unparalleled in American history, actually almost falling apart like a sieve. Yesterday we found out that one out of every 13 letters to the Soviet Union was opened, read, photographed, and distributed widely throughout our intelligence agencies. And you say your responsibility did not break down?

Mr. DAY. Yes. Because, as I have already stated several times, it is not clear to me that it was illegal for the CIA to open the mail.

The CHAIRMAN. It is clear to everybody else, including the CIA.

Mr. DAY. I say it is not clear to me.

Senator SCHWEIKER. It is not clear to you?

Mr. DAY. That is correct.

Senator SCHWEIKER. Are you saying the mail was not opened?

Mr. DAY. No, I say it is not clear to me that it was illegal for them to open the mail.

Senator SCHWEIKER. Then you are saying that it really was not illegal to open the mail, and I gather you take issue with your own postal laws protecting the sanctity of the mail?

Mr. DAY. There are more postal laws than the one that has been referred to here. I referred to another one, and there are CIA laws, and there was a CIA position that existed, particularly when I was there, that make it far from clear to me that there was any breakdown.

Senator SCHWEIKER. If it was not clear to you, and if that was really the issue, do you have an opinion in writing from either the Attorney General or the General Counsel to you as Postmaster? Would you not have had that pursued? Would you not have nailed that down? Would you not have asked for a legal opinion if it really was unclear?

Mr. DAY. I had no occasion to ask for it, Senator.

Senator SCHWEIKER. Did Mr. Mitchell ever give you an opinion to that effect?

Mr. DAY. You seem to have me confused with someone else. Mr. Mitchell came on the scene long after I had departed.

Senator SCHWEIKER. Did any of the Attorneys General that served with you give you an opinion in writing that makes your point valid?

Mr. DAY. No. I never asked for one.

Senator SCHWEIKER. Did you not feel it was your responsibility to get one?

Mr. DAY. No.

Senator SCHWEIKER. Well, we do have a problem, there is no question about that, Mr. Day.

Let me ask you, Mr. Blount, what is your response as to whether the duty of the Postmaster General is to guarantee the sanctity of the mail, and where did your responsibility break down?

Mr. BLOUNT. Well, Senator, for one, I don't think my responsibility broke down.

Senator SCHWEIKER. Do you agree with Mr. Day that it is legal to open everybody's mail?

Mr. BLOUNT. I don't know that Mr. Day said that, to begin with. Second—

Senator SCHWEIKER. I am not sure what he said on that point either.

Mr. BLOUNT. He said, if I understood him, that it wasn't clear, and I did not understand at the time that what the CIA was doing was illegal, and I don't understand that now.

I don't intend to engage in a legal debate with you, but—I am not a lawyer.

Senator SCHWEIKER. Did you get an opinion from your lawyer? Did you get an opinion from Attorney General Mitchell?

Mr. BLOUNT. Senator, I have testified that I raised the question of legality in the meeting I had with Mr. Helms. Mr. Helms told me that he had talked to the Attorney General about this, he had briefed him on it, and he had no problem with it.

Now, I had first recollected that he was going to talk to the Attorney General, but the evidence indicates that he had talked to him the day before he came to see me. And I accept that. I have no quarrel with it. It is just a question of what you remember 4 years or more ago.

Now, I think you are dealing with the question, the age-old question, of citizens' rights versus national security; and if I might be so bold as to suggest that this kind of question is best dealt with in an atmosphere different from the one that we are dealing with it today. I think it is a difficult question which people of not only good will but great sensitivity have varying views about. And it would seem to me that one way to proceed on that issue would be to maybe try to construct a different atmosphere from this kind of atmosphere—maybe a distinguished panel to deal with this question.

I do not understand, again, that what the CIA was doing was illegal. I did not understand it at that time. I just do not have an understanding about that matter. I raised the question of legality. It was disposed of by the fact that the Attorney General was going to be involved in that, and I had no problem with it. So I do not think my responsibility broke down.

Senator SCHWEIKER. Are you testifying that Mr. Mitchell told you it was legal, or sent you anything in writing that said it was legal?

Mr. BLOUNT. I am testifying that Mr. Helms told me he had talked with the Attorney General. And he had no problems with that.

Senator SCHWEIKER. The Attorney General does not recall that, of course.

Mr. BLOUNT. I do not know what the Attorney General does recall.

Senator SCHWEIKER. I can assure you that is what he testified to this committee because I took the deposition when he said he did not recall that conversation at all. That is where your point stops, right there.

Mr. BLOUNT. You are talking about people who recall a conversation, Senator; in my own case, 4 years ago; in Mr. Day's case, 14 years ago. I think that is asking a little bit too much of detailed human memory. Everybody can sit up here and make a speech, if they want to. But if you are trying to get at the facts, I would suggest you try to construct an atmosphere where you can deal with these sensitive questions of citizens' rights versus national security. I happen to believe that national security is very important in this country. I also believe that citizens' rights are very important, and I think those two can be and have been, over the years, reconciled.

Senator SCHWEIKER. You said that basically the atmosphere today is different from the time when you were Postmaster General. I would not disagree with that. But the one thing that has been constant for

200 years is the fourth amendment. That has been pretty clear cut, and hopefully it is observed by our own Government. So I think that element of stability somehow ought to be with the system, and I thought it was. But there is obviously a difference.

Mr. BLOUNT. I think it is with the system, Senator. I think that some of the time, we get carried away with some things that make headlines. They are talking about opening the mail. The mail is opened all the time by the Customs Department. It is opened by the Dead Letter Department, and this is by law.

Senator SCHWEIKER. That is a very important distinction, though, Mr. Postmaster General—a very important distinction.

Mr. BLOUNT. Well, as far as I know, the CIA was acting under the laws of this land to—

Senator SCHWEIKER. But you made no effort to get an opinion or a position, even verbally, from anyone who really could give you advice. Because certainly, the CIA was not an objective source in this case.

Mr. BLOUNT. Well, I do not have any comment about that.

Senator SCHWEIKER. Mr. Gronouski, I would like to ask you the same question.

Mr. GRONOUSKI. Well, I felt immediately upon assuming the Postmaster General's job, that I had some very serious responsibilities in terms of individual rights. I can recall four cases that ensued. One had to do with keeping lists—the customs office. In effect, what the customs people did was to write to people, and ask them if they wanted to receive mail that came from overseas. The people would have to sign a card and send it back, and this developed into quite a list.

I ordered those lists destroyed, because I felt that kind of a list, given the fact that people were receiving mail from Russia and what have you, might be researchers of universities or what have you, that those lists could be used by a McCarthy in Wisconsin—that is not Gene, that is Joe—and I felt that was a serious matter, and one I did not want to tolerate.

I felt that we had been very lax on a second point, on mail coverage; that anybody and his brother could authorize a mail cover, and the mail covers proliferated extraordinarily—24,000 in 2 years. And I put in a new set of regulations a year before the Long committee brought the subject up, which centralized in the 15 regional inspectors the right to authorize a mail cover.

I have already mentioned the fact that when it came to my attention that the Attorney General had the capacity to seize mail under court order, I objected to that, and arranged with the Secretary of Treasury—two of them—to stop that procedure, and also suggested legislation to change the law in that respect.

Senator SCHWEIKER. And I want to commend you.

Mr. GRONOUSKI. I got very concerned on a fourth point, with how we dealt with pornography. I am not a pornographer, but I also think that this whole question—I do not say I object to what some people call pornography, but I felt it a very serious matter that the Post Office Department has been dealing with this. And, in fact, I wrote an article very early on in my career as Postmaster General in the Yale Law Review—I believe it was the Yale Law Review—explaining

my position on this, and implemented that, which is essentially that the Post Office Department was not to do any censoring of mail in terms of the law.

These are four pursuits I can say I pursued actively. I had no question in my mind all of the time I was there that not only was opening mail illegal, except under court order or under a specific statute; and second, that delaying the mail was illegal. Now, I had had the impression, up until very recently, that the only thing that involved a mail cover was that the postman, when he released his mail, would write down a list of return addresses, and who the mail was going to, and then proceed to deliver the mail the same day.

Obviously, there was a failure in my administration, because something happened that I did not know about. All I can say is, I diligently pursued, and I failed on that score.

Senator SCHWEIKER. I think, Mr. Gronouski, in your case, your record does show that you tried, and tried under very adverse circumstances, to do the job. When I was a Congressman, I got letters criticizing the position you took on pornography, so indirectly that is a compliment to the way that you did protect the sanctity of the mail, and I think you deserve some credit for it.

Mr. DAY, you did not want to hear what Mr. Helms told you. In view of the fact that you did not know he was going to talk about employees of yours performing an action that might be illegal, why would you not want to know what your own employees might or might not be doing?

Mr. DAY. I do not recall Mr. Helms saying anything at all to me. Mr. Dulles did all of the talking, so far as I can recall, except the conversation with Mr. Roosevelt. But I was told that it was something very secret, and it was in reaction to that I said I did not want to know about it. I cannot recall having anything said to me that gave me any idea about what the specifics of the secret were.

Senator SCHWEIKER. In your judgment, the word "secret" made it right?

Mr. DAY. I did not say that, Senator, or anything close to it.

Senator SCHWEIKER. What judgment did you make?

Mr. DAY. I have already covered that. The CIA, in my opinion, then and now, has certain special powers. Naturally, the Congress is not going to outline in a statute all the possible techniques for carrying on a spying operation. But to me, there was and is a clear indication in the whole authorization of the CIA and its whole function that it has certain unusual powers. I knew I had no control over those powers. I felt it was up to the CIA to take care of what they had to do in the spying business.

Senator SCHWEIKER. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Huddleston.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Gronouski, you indicated that during your tenure as Postmaster General, that not only were you not advised of the extent and nature of the mail opening project, but you did not believe that either your General Counsel or the Inspector General of the Post Office Department had been advised of it?

Mr. GRONOUSKI. That was and is my belief. I could be dissuaded, but that is my belief.

Senator HUDDLESTON. That is not the case with you, Mr. Blount, because during your tenure I believe you employed Mr. William Cotter as Inspector General; is that correct?

Mr. BLOUNT. As Chief Inspector.

Senator HUDDLESTON. Mr. Cotter was Chief Inspector of the Postal Department. Were you aware at the time that he had been involved personally in mail opening projects of the CIA?

Mr. BLOUNT. No, I was not.

Senator HUDDLESTON. Were you aware at the time that there was a secrecy agreement between the CIA and its employees not to reveal certain information to which they were privy?

Mr. BLOUNT. I never heard of it until I testified before the House committee up here earlier this year.

Senator HUDDLESTON. Were you aware that subsequent to the employment of Mr. Cotter, seven other members, former CIA employees, four of whom had been involved in and had specific knowledge of the mail opening, came into that Department?

Mr. BLOUNT. I don't believe so.

Senator HUDDLESTON. You were not aware of that? Did you ever discuss with your Chief Inspector the question of the mail openings and its nature and propriety?

Mr. BLOUNT. Senator, we had many discussions about the operations of the postal inspectors, including mail covers, including mail openings under warrants, including the postal participation in the strike force, as it were, assembled to fight organized crime, and the role that the Post Office played in not only gathering evidence, but evidence that led to convictions of many people involved in organized crime around this country, so that is the kind of thing that I remember that we talked about.

Senator HUDDLESTON. Do you recall how the name of Mr. William Cotter came to you as a potential person to fill this important position?

Mr. BLOUNT. Yes, I do.

Senator HUDDLESTON. How did that follow?

Mr. BLOUNT. When I first came to the office, I had looked at the Post Office Department. I went over to talk to—prior to being sworn in, I was over talking to Mr. J. Edgar Hoover, who was then Director of the FBI. I, like Mr. Day, had some question about whether or not that kind of operation belonged in the Post Office Department, and explored the ideas of whether or not it could be transferred out of the Post Office Department, and other people fulfill that responsibility.

As I looked at that responsibility, however, I began to ask people for recommendations for someone to become the Chief Postal Inspector. I got recommendations from people inside the Post Office Department. I got recommendations from Mr. Hoover. I also got some recommendations from Mr. Helms. I interviewed a number of these people. Mr. Cotter was one of them, and I selected him.

Senator HUDDLESTON. Now, at the time then that you asked for recommendations, you were aware that the FBI and the CIA were involved in mail openings or mail surveillance projects that at least may have some questionable legality?

Mr. BLOUNT. No, sir, I was not at all.

Senator HUDDLESTON. I thought that you just said that you talked to Mr. Hoover about the question of whether or not this was something that ought to be carried out?

Mr. BLOUNT. I am talking about the Postal Inspector, the Postal Inspector Service being lodged in the Post Office Department itself.

Senator HUDDLESTON. I see.

Mr. BLOUNT. I had some question about whether or not that should be lodged in another agency.

Senator HUDDLESTON. But you had no question as to whether or not the projects that the FBI and the CIA were undertaking with the mail were legal?

Mr. BLOUNT. I had no knowledge of that at that point.

Senator HUDDLESTON. Did you discuss with Mr. Cotter when you interviewed him what his experience was and what type of activity he had been involved in?

Mr. BLOUNT. I am certain—I don't recall our conversation, but I am certain I discussed with him his experience, what he had been doing, what his experience had been. I don't recall any discussion relating to the Post Office Department.

Senator HUDDLESTON. None at all, whether he had any knowledge of the workings of the Post Office Department, or what he might be required to do as the Chief Inspector?

Mr. BLOUNT. Senator, I am quite sure we talked about the postal inspectors, and I am quite—I don't recall, but I find it pretty logical that we would have some knowledge about the postal inspectors. I found, after having been in the Post Office Department for a short time, that the postal inspectors were a highly qualified and varied group of investigators in the U.S. Government, and I'm quite sure we discussed the postal inspectors.

Senator HUDDLESTON. You do not recall his indicating to you any knowledge at all about the ongoing projects in New York?

Mr. BLOUNT. I am quite sure I had no discussions with him about that.

Senator HUDDLESTON. And he did not express to you any concern or give you any indication that the fact that he was under a secrecy agreement might present some restrictions on him in giving you a complete picture of what your own Department was doing?

Mr. BLOUNT. To my knowledge, I never heard about the secrecy agreement before I testified before the House committee earlier this year.

Senator HUDDLESTON. You did not know he would be prohibited from fulfilling his responsibility to you because of an agreement with a previous agency?

Mr. BLOUNT. I never heard of a secrecy agreement.

Senator HUDDLESTON. To what extent does a Postmaster General rely on or seek information relating to illegal activities relating to the mails from his Chief Inspector?

Mr. BLOUNT. Well, I think generally they rely on the General Counsel for that.

Senator HUDDLESTON. What kind of reports does the Chief Inspector make to the Postmaster General?

Mr. BLOUNT. Oh, there are a great number of reports, Senator, a great number of meetings. There is a great amount of discussion about the kind of activities that the postal inspectors are involved in.

As far as I was concerned, they were involved in a massive upgrading of the postal inspectors, recruiting from colleges for the first time and bringing in qualified, highly qualified people, and conducting extensive training programs. We had many meetings on all of these subjects.

Senator HUDDLESTON. But when they encountered something they considered illegal in the course of performing their duties, you would expect them to advise the Postmaster General, would you not?

Mr. BLOUNT. Well, there are many times that the Chief Inspector would bring to me matters that not only were illegal, but—you know, the question of security of the mails, the organized crime effort to break the mails, and when I got there, there had been an enormous amount of stealing from the mails.

Senator HUDDLESTON. Would you have expected the person you put in as Chief Inspector, if he had any reason to have any serious question about the legality of any activity relating to the mail, to at least consult with you or the General Counsel or someone?

Mr. BLOUNT. I'm quite sure we had conversations relating to those kinds of matters, from time to time. I don't recall any specifics.

Senator HUDDLESTON. You do not recall any incident where he came to you and discussed specifically the mail openings by the FBI and the CIA?

Mr. BLOUNT. I never recalled anything about that until Mr. Helms came to see me in June of 1971.

Senator HUDDLESTON. Nothing subsequent to it from your own Department?

Mr. BLOUNT. I do not have any recollection.

Senator HUDDLESTON. Thank you, Mr. Chairman.

The CHAIRMAN. I must say that I have found some of the testimony this morning both astonishing and unsettling.

First of all, when you say, Mr. Blount, that there is lots of mail being opened every day in the Post Office Department and cite the opening of dead letters and the opening of mail that is opened under court orders as examples of letter openings, you certainly do not mean by that to imply that lawful mail opening is no different than unlawful mail opening, do you? That just because letters are opened, it really does not matter whether they are opened in accordance with the law or contrary to the law? Is that your position?

Mr. BLOUNT. I didn't make any comment about that, Senator.

The CHAIRMAN. You said quite clearly you did not understand why this committee was so concerned about this matter because lots of mail was being opened all the time.

Mr. BLOUNT. I don't recall making that statement that I don't know why this committee is so concerned, Senator.

The CHAIRMAN. Well, you certainly conveyed that impression to me because you then went on to say that there were lots of letters being opened in various ways.

Mr. BLOUNT. That I did.

The CHAIRMAN. Well, then, just to clarify the issue, you did not mean by that to imply that unlawful opening of the mail was unimportant or ought not to be examined?

Mr. BLOUNT. I certainly did not.

The CHAIRMAN. All right.

Since several of the witnesses, including Mr. Day, said they were unclear about the legality of this CIA mail opening program, I think that that matter should be laid to rest right here and now. As I understood your testimony, Mr. Day, you said you were told there was a secret, and you did not know what the secret was. You did not want to know what the secret was.

I must say, that attitude has existed in lots of places. It has existed in the Congress. When I first came to the Congress, I would hear senior Members of the Congress who were part of the watchdog committee for the CIA make the same statement. They would say, "I don't know what the CIA is doing, and furthermore I don't want to know."

But I suggest to you that if that is the prevailing attitude of the men who hold the responsible positions in Government, then we are just inviting the very kind of trouble that did in fact ensue, the very things that this committee is now charged to investigate. All kinds of illegalities and wrongdoing may never have occurred if public officials had said, "Yes, it is my responsibility to know what is going on in my Department, and even if it is a secret, I want to know about it. I do not want to turn my back on it."

Do you not think that as Postmaster General of the United States you had a responsibility to know what is going on in your Department, even though they told you it was a secret?

Mr. DAY. No, I didn't think I had a responsibility to know what the CIA was doing. I want to emphasize, Senator, I think there is a big difference between Senators on an oversight committee and the Postmaster General. Senators do have an important oversight responsibility in the total Government. I had no power whatever over the CIA.

The CHAIRMAN. No, you had no power over the CIA, but you did, as the Postmaster General, not only have power over your agency, but you were charged with the laws of governing the Post Office Department. Those laws clearly made it illegal for first-class mail to be opened, and there should not have been any question in your mind about the law.

Let me just cite the law on this subject. First of all, there is a statutory law, 39 U.S.C. 36-23(d) provides—and I read the pertinent part: "No letter of such a class"—being first class—"of domestic origin shall be opened except under the authority of a search warrant."

That is pretty clear, and then there is the Post Office Department regulation, 39 C.F.R. 115.1, and that regulation provides, pursuant to the statute, "First-class mail is given absolute secrecy while in our custody." That is pretty clear, too.

Mr. DAY. Under sections—

The CHAIRMAN. Let me just continue, and then I will invite any comments you would like to make.

And then there is the decision of the U.S. Supreme Court on this question, in the case of the *United States v. Van Lewin*. It quotes from an 1878 decision of the Supreme Court. I happen to refer to this one because it is one of the latest decisions of the Court. Let me read the Court's decision on the question:

It has long been held that first class mail, such as letters and sealed packages subject to letter postage, as distinguished from newspapers, magazines, pam-

phlets, and other printed matter, is free from inspection by postal authorities except in the manner provided by the fourth amendment.

Then in the 1878 case which established the sanctity of the mail and made it subject to the protection of the fourth amendment of the Constitution, which is the highest law of the land, the Supreme Court said :

Letters and sealed packages of this kind in the mail are as fully guarded from an examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guarantee of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers thus closed against inspection wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant issued upon similar oath or affirmation.

Then, there is a criminal statute which says, 18 U.S.C. 1702, Obstructions of Correspondence, and it says, reading that pertinent part :

Whoever takes any letter or post card or package, opens, secrets, embezzles, or destroys, the same shall be fined not more than \$2,000 or imprisoned not more than 5 years or both.

So it would seem to me that as a Postmaster General of the United States each one of you gentlemen were charged with knowing what the postal laws were, what the Supreme Court had said about the Constitution in its guarantees of privacy, and there ought not to have been any question about that. I would further suggest that it was not your prerogative as a Postmaster General to decide how much authority the CIA had. You did not even want to know what the secret was, so how could you know what they were doing in your Department?

But you did have a responsibility, it seemed to me, to make certain that the mail that passed through the Department was being given that degree of protection referred to in the laws and the Constitution of the United States.

If you take a different view of your responsibility, I invite you to express it.

Mr. DAY. I will not attempt, Senator, to give a long legal argument, although I would bet a dollar that in 1878 whatever spy agency they had was opening mail, but there was not any CIA as such then.

There is a thing that Mr. Gronouski touched on that I think is very revealing as to the difference in the atmosphere in which I operated from the atmosphere that may have come about subsequently. There was still a lot of McCarthyism in the air and in the Congress when I was Postmaster General. The Congress passed a law which said that if you were the recipient of some open, non-first-class publication mail from a Communist country, the Post Office couldn't deliver it to you unless first you sent in a card saying you wanted it. That was not something I thought up. That was passed by the Congress. I thought it was ridiculous, but that's the kind of atmosphere in which I operated.¹

The CHAIRMAN. I recognize that, but let us draw the distinction. However foolish the law may have been, you were obliged to comply

¹ Mr. Day requested that the committee include in the record an addition to his remarks concerning the CIA's mail opening program. These have been appended at p. 259.

with it because it had been enacted by the Congress, and it was part of the law of the land. That law, incidentally, was later declared unconstitutional quite properly.

But this is quite a different matter. We are talking about mail openings which are contrary to the law. Now, let us not confuse this issue by saying that there may be some inner sanctum that exists within the intelligence community that can decide that it has greater authority or higher authority or need not attend the laws of the land, a very dangerous and pernicious doctrine for anyone who wants to see a free society preserved. But we do not even have that issue here, that notion which seems to have grown in so many minds, that the CIA can do what it pleases because it is charged with national security, the laws to the contrary, the Constitution to the contrary, notwithstanding, because we have plain evidence—even the intelligence agencies recognize that what they were doing was unlawful. They did not contend that what they were doing complied with the law.

When the agencies got together and made a special report to the President of the United States recommending that he approve certain unlawful actions, which later became known as the Huston plan—which President Nixon did approve and then rescinded 5 days later—they referred to the opening of the mail in this fashion and in their own report, signed by J. Edgar Hoover, Director of the FBI; Mr. Helms, Director of the CIA; General Bennett, the Director of the Defense Intelligence Agency; Admiral Gayler, the Director of the National Security Agency. These are the top spokesmen for the entire intelligence community. What do they say about it?

They say: "This coverage, not having the sanction of the law, runs risk of an illicit act, magnified by the involvement of a Government agency."

So there was not anybody anywhere who pretended that this was lawful, and I would suggest to you gentlemen that as Postmasters General of the United States charged with seeing that the law of the land is recognized in connection with the delivery of the mail, you had some responsibility to inquire about secrets in your agency. When you were told about this practice, you had some responsibility to determine whether or not it was legal by referring it to the proper authorities and obtaining from them the proper kind of opinion, and your failure to do so, in my judgment, was a serious omission.

We will question Mr. Helms. As we try to get the whole story pieced together, we will question others as to why each of you was not told the particulars of this operation. But that does not excuse each of you from the duty to make certain that the Post Office Department was being operated in conformity to the laws and the Constitution of the country.

Mr. Mondale?

Senator MONDALE. Mr. Blount, would you agree that the CIA had a duty to tell you that they were opening mail?

Mr. BLOUNT. Gee, I don't know, Senator, what the responsibilities of the CIA are.

Senator MONDALE. So you do not know whether they had a responsibility to tell you or not.

Mr. BLOUNT. No, I don't know whether they do or not.

Senator MONDALE. So, the Postmaster General does not have the duty to ask the CIA, and the CIA may not have the duty to tell the Postmaster General. How then does anybody faithfully execute the law?

Mr. BLOUNT. I raised the question of the legality of this matter and just to be specific about what I recall of our conversation, as far as the postal employees are concerned, I am—well, let me back up—I do not understand the postal employees had any involvement in this matter except to turn certain mail that was going to the Soviet Union over to the CIA and the next day carry it on.

Senator MONDALE. That was not something you asked about. That was just something you assume, you have indicated.

Mr. BLOUNT. No, that's not correct. That was something I was told.

Senator MONDALE. By the CIA?

Mr. BLOUNT. By Mr. Helms.

Senator MONDALE. So the postal officials and employees had no knowledge or complicity whatsoever with the mail opening functions of the CIA?

Mr. BLOUNT. My understanding was absolutely that the postal employees were not involved in anything but turning the mail over to the CIA, and this operation was going on in New York.

Senator MONDALE. And that was based upon what Mr. Helms told you?

Mr. BLOUNT. That was my only knowledge about it.

Senator MONDALE. Did you inquire yourself, through your Department, whether that was true?

Mr. BLOUNT. I don't recall any other conversations about this matter.

Senator MONDALE. You accepted Mr. Helms' word that that was the case?

Mr. BLOUNT. That is all I know about the issue.

Senator MONDALE. Mr. Blount, you said earlier that you think it would have been preferable to discuss this matter in a different environment, with a different approach. Could you describe what you think is the appropriate way the requirement in this matter should have been worded?

Mr. BLOUNT. I was addressing myself to the question of the matter of individual citizens' rights versus national security. I said that I didn't have any magic suggestion in that regard. I suggested it is a question of the most serious nature and a question of the nature that is most or better dealt with in an atmosphere where serious scholars or people that have knowledge or views about this matter can sit down and debate these issues away from the public glare, and try to come up with some suggestions that might be useful to the Congress in guiding the enactment of the laws that deal with these problems.

Senator MONDALE. In these public hearings, we are trying to determine issues of accountability and whether the law has been violated, in this case with mail openings. Do you think that public hearings of this kind are improper?

Mr. BLOUNT. No; that was not my point at all, Senator.

Senator MONDALE. Do you think they are desirable.

Mr. BLOUNT. I think sometimes public hearings in the light of the glare of publicity, in matters that are headline grabbing, can go too

far. I think that the question of national security is a major question for this country, as is the question of individual citizens' rights.

Senator MONDALE. Do you think the hearings today were proper and desirable?

Mr. BLOUNT. Well, I have testified to this committee in August the same things I testified today, no different.

Senator MONDALE. The only difference is that it is in public and the reason for that—

Mr. BLOUNT. The only reason it wasn't public was because the Senate committee decided it not to be as far as I was concerned.

Senator MONDALE. That is correct. But what I am trying to get at is that I thought you doubted the propriety of public hearings on this matter. But I gather from what you say, you do not.

Mr. BLOUNT. That was not the question I was raising.

Senator MONDALE. So you consider these hearings to be proper and desirable?

Mr. BLOUNT. I don't know that I have any opinion about that. If it is helpful to the Senate, I think that is useful.

Senator MONDALE. You will not say it is desirable?

Mr. BLOUNT. Well, I don't know whether it's desirable or not.

Senator MONDALE. That is what I said, you will not say it is desirable.

Mr. BLOUNT. I think there have been plenty of hearings that were not desirable.

Senator MONDALE. I am talking about this one.

Mr. BLOUNT. I don't have any quarrel with this one at all. I just testified to the same thing I testified before.

Senator MONDALE. Thank you.

Senator HUDDLESTON. Mr. Chairman?

The CHAIRMAN. Senator Huddleston?

Senator HUDDLESTON. Just one brief statement, Mr. Chairman. It seems to me that what we encounter here today is very similar to what we have seen in many instances. Perhaps one of the most significant differences between our system of government and some others is that we believe that Government can break the law and it and all of its agencies are potential law breakers that should be held accountable when they do.

But we cannot hold them accountable if we have a procession of people who are charged with certain responsibilities that do not take the time and the trouble to find out whether or not what the government might be doing is legal or illegal, even when there is a substantial question raised in the minds of many people about the legal status of these government activities. It seems that no matter what kind of laws we might pass, if we do not have this interest and this effort by people in responsible positions to at least ascertain and make sure that this determination is made to the best and the fullest extent possible, whether or not the law is being broken, then our law becomes ineffective and our citizens' rights are infringed upon. Furthermore, those rights are not protected in the way that those charged with the responsibility of protecting them should see that they are.

And we have had witnesses say time and time again, during the entire course of this hearing, concerning the matter of individuals

in high positions all the way down to the low-level operatives that are implementing programs, that we just assumed that because so and so said this was the policy of the country that it was proper and legal. And we carried out those instructions without question. I think that therein lies much of the problem that we have encountered in going too far, going beyond the charter, going beyond the law in carrying out what people perceive to be their responsibility and thereby infringing on the rights and privileges of the citizens of this country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Huddleston. I have no further questions. I want to thank you gentlemen for your testimony.

Mr. REILLY. Mr. Chairman, I know the rule prohibits the counsel to ask questions, but would you and Senator Mondale and Senator Huddleston—Senator Schweiker has left the room—but may I have an opportunity to make some observations for 1 or 2 minutes that I might have?

The CHAIRMAN. Are you counsel?

Mr. REILLY. For Mr. Day.

I am James Francis Reilly and I served under all three of these gentlemen in *pro bono publico*.

The CHAIRMAN. Do you desire to testify as a witness and be sworn?

Mr. REILLY. I will do anything I want so I can make my observations.

The CHAIRMAN. You can make your observations.

Mr. REILLY. I will testify.

The CHAIRMAN. You will have to put under oath and be heard as a witness.

Mr. REILLY. That's all right, that's perfectly all right.

The CHAIRMAN. Mr. Day, I think you should stay if your lawyer is going to testify.

Mr. DAY. I will stay behind him and advise him.

Mr. REILLY. That doesn't say I will accept it.

The CHAIRMAN. If the other gentlemen will withdraw and if you will take the oath, please.

Do you swear that all the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REILLY. I do.

TESTIMONY OF JAMES REILLY, SR., COUNSEL FOR J. EDWARD DAY

Mr. REILLY. Mr. Chairman and Senators, the observation I want to make: 40 years ago on October 12, I was admitted to the bar in the District of Columbia. I have been in all phases of the law and even today in retirement—you've got a young man on your staff who knows something about this, Mr. Bayley.

I try cases, I have been in all the courts and I was privileged to be a member of the Post Office Advisory Board by appointment of President Kennedy and I resigned in 1964 and we wrote two reports. I think you ought to know—now this is not a trial, I understand that—and in talking about memory, when I went to a little school, Mount Saint Mary's up where Mother Seton is now buried in that area, founded in 1808; I claim it's the first Catholic college, Georgetown disagrees.

But in my memory there was a priest there that said that memory was a fact that I wish to forget. And Senator Mondale, when I see you there, I think of Mankato and St. Cloud, Minn., and I was trying to recall whether it was he or Miles Lord, the now Federal district judge, that made the argument for the CAB. I look at you, sir, and in February 1945 I was in your city, Boise, and I asked you up here what the name of the publisher was. I thought I was quite a lover boy, I was about 40 years old. I'm 68 now. She was 80, I think. And we discussed my friend Leroy Clark. And this Clark family had one of the great dynasties in America and made a great contribution to this country.

But Mr. Day—I was made acting chairman—the law required that the Postmaster General and the Deputy Postmaster General be chairman and vice chairman. And he was here. Mr. Day is probably a real good lawyer. I'm not sure about that. He's my friend. And I said to him, "Well, what do you want us to do?" We first made the only mechanization reports that were made in the Post Office Department. And then we made—on this question of civil rights versus national security, he was the one that authorized us to make a fair employment study which we made and which did much to grade the black people in this country in better jobs in the Post Office Department in those days.

And then you're talking about things—I'm almost ready to become an intellectual, *non pro tem*. But I say to you you've got to look at it. Look at what Mr. Blount tries to say, but Mr. Blount is so busy making money he forgets these points. He's not a lawyer. In my profession, as a lawyer, in my 40 years in the bar, and believe me, I fight for it all the time. I don't take my hat off to anybody in this room about the declaration, adherence, and support of civil rights. In money, just as one of the two originators of the act, the legal aid agency, as one of the nine members who preside in the Superior Court in the District of Columbia and I want you people to remember those things when you evaluate this.

And gentlemen, your sole purpose, your ultimate purpose is a legislative purpose. And I think you have enough of that. You haven't got any prosecuting authority and I don't think the former attorney general of the State of Minnesota, a distinguished young lawyer in 1950 in the State of Idaho, I don't know about Mr. Huddleston, I think he's from Alabama, I'm not sure. Kentucky?

But I just want to make—I sit back here at my age and I'm still trying to be active and helpful. I have six adult kids that do fine. I like to brag about them. They're half Irish and half Italian and the best part is the Irish.

I want to thank you very much. I think this committee has done right. There is nothing like open air, nothing. Nothing can supplant it. The Rockefeller Commission, they never called some of these people as a witness. They never called Ed Day. They get some fellow by the name of Cotter or something like that and they go to it. I looked at the list of the members for the first time this morning and, thank God, I think there's only two lawyers. But they take your rights away from you and I say to you, Senator, I think you have enough to come up with a plan.

I was sitting here writing it and I'm going to send it to Mr. Wallach and I think we can more cohesively tie a lot of these pieces and can really oversight the Central Intelligence Service and I make no apology for them at all and I don't know enough about it, but it's kind of the greatest thing. But thank God the U.S. Senate is here and that you are having a public hearing where it can be heard. And thank you for letting me be heard, despite what the rules require.

Thank you.

The CHAIRMAN. Thank you very, very much, Mr. Reilly.

Our next witnesses are Mr. Montague and Mr. Cotter. If you would come forward together and take the oath?

Would you raise your right hand? Do you solemnly swear that all of the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MONTAGUE. I do.

Mr. COTTER. I do.

The CHAIRMAN. Mr. Schwarz, would you please start the questioning?

Mr. SCHWARZ. Mr. Montague, will you recount, just quickly, your career at the Post Office? I know you started and worked your way up to the Office of Chief Inspector. Would you say what you were doing in 1950, at the time you retired?

**TESTIMONY OF HENRY MONTAGUE, FORMER CHIEF INSPECTOR,
POSTAL INSPECTION SERVICE, AND WILLIAM COTTER, FORMER
CHIEF INSPECTOR, POSTAL INSPECTION SERVICE**

Mr. MONTAGUE. I became a postal inspector in 1942 in the New York division. I was appointed Inspector in Charge of the New York division in May 1951. I served in that capacity until February 1961, when I became Chief Inspector and I retired from that position in February of 1969. I continued to serve as Chief Inspector, during an interim period, until Mr. Cotter was appointed to that position in early April 1969.

Mr. SCHWARZ. All right. Now, when you were in New York, the name of the man who was then Chief Inspector was Mr. Stephens, is that correct?

Mr. MONTAGUE. Correct.

Mr. SCHWARZ. Did he come to you and tell you to give some aid to the CIA? We are going to get to the kind of aid that you were asked to give.

Mr. MONTAGUE. I believe, Mr. Schwarz, that that started a little earlier than that. It was at the end of 1952 when I received a letter from the then-Chief Inspector that two men from the CIA would be in to see me and that we should give them certain cooperation. It has always been my opinion that this started in 1953, because I think most of the activities started then. I know it did, but during this investigation, when I was interviewed, I learned that actually it started in the latter part of 1952.

Mr. SCHWARZ. Now, did the man from the Post Office who wrote to you say anything about what was to be done and what was not to be done in connection with the CIA project?

Mr. MONTAGUE. I don't exactly recall that, Mr. Schwarz.

Mr. SCHWARZ. Were you told by someone in the Post Office that no mail was to be opened?

Mr. MONTAGUE. That would have been understood. And we told the CIA representatives that.

Mr. SCHWARZ. When you say we told the CIA representatives, who told the CIA representatives?

Mr. MONTAGUE. I did.

Mr. SCHWARZ. And what did you say?

Mr. MONTAGUE. Well, apparently, after that letter they did come into the office. The first process was just a survey to determine how mail from Russia was being handled and what the quantity was. Then later, I believe it was in January or February 1953, they got around to wanting to make records of some of the names and addresses on some of these envelopes. Then, after that, they wanted to use a photographing process because it was becoming a time-consuming thing and authority was given for that.

Mr. SCHWARZ. To do what?

Mr. MONTAGUE. To make pictures of the outsides of envelopes that were selected by them. Now, this whole project was that they would know the mail in which they would have an interest. No one in the Postal Service would know that. They could not give us any names, as you could in an ordinary mail cover. They wanted the return addresses on these envelopes. It was national security secret-type, classified-type investigation and therefore they were permitted to look at the mail to select the envelopes of which they wanted to make pictures, that is, the outsides of the envelopes.

Mr. SCHWARZ. All right. Now, did you make clear to them that they were not to open the mail?

Mr. MONTAGUE. Yes, sir.

Mr. SCHWARZ. Did they ever tell you that they were opening it?

Mr. MONTAGUE. No.

Mr. SCHWARZ. Now, turning to the FBI for a moment, did you know the FBI also had a mail cover, that is, exterior envelopes project?

Mr. MONTAGUE. Yes.

Mr. SCHWARZ. Did the FBI ever tell you that they were opening certain letters?

Mr. MONTAGUE. Not to my recollection.

Mr. SCHWARZ. Now, in your deposition, you said that while you had instructed the CIA people not to open the mail, you did not make the same statement or instruction to the FBI people, and you gave a reason for it. What is the reason you did not tell the FBI?

Mr. MONTAGUE. According to my best recollection, we had not had this type or any real type of cooperation in a case of this kind with the CIA. This was something new. They were not one of the regular law enforcement agencies and for that reason more attention was given to laying down the guidelines as to what would or would not be permitted.

With the FBI, that organization was Federal law enforcement, the same as we were, and we know that they knew the laws as well as we did or do.

Mr. SCHWARZ. So, you assumed that they would not open mail and therefore you reached a conclusion you did not need to instruct the FBI; is that what you are saying?

Mr. MONTAGUE. We didn't think it was necessary. That is correct.

Mr. SCHWARZ. All right. Just one final question to you. I would like to read exhibit 9,¹ a memorandum dated May 19, 1971, something that the CIA persons said about you and ask you whether it is a fair characterization by the CIA of their relationship with you. I am going to read from paragraph 4.

"The DCI"—that was Mr. Helms then—"then asked, who in the Post Office Department knows the full extent of the operation—beyond cover surveillance. The CCI"—that was Mr. Angleton then—"replied that only Mr. Cotter knows, for he had been witting while with CIA and the Office of Security. The previous Chief Postal Inspector, Mr. Montague, had never wanted to know the extent of examination actually done, and was thus able to deny on oath before a congressional committee that there was any tampering."

Is that a fair characterization of your attitude, or do you regard that as—

Mr. MONTAGUE. No; I don't know how they can say something like that. That is an opinion of the man who wrote this, whoever he may be. I certainly never told that to anybody and I had never indicated any intention that I did not or would not want to know what was going on.

Now, let me explain a little, as I did in my—in answer to previous questions—that this matter of mail cover is something which is a small part of our overall obligations and responsibilities. We have mail fraud, robberies of post offices, theft of mail, pornography, investigations of postal services, inspections of the post offices, and all of the rest of it. Once, as in this case, that a decision is made that the mail cover can be given and the guidelines are drawn up and laid out and the thing is started, then you assume that that is the way it is running.

Because we did not come back perhaps, and check with them on a daily basis or a frequent basis, that doesn't mean that we were not interested or that we didn't think it was still running as it should have.

Mr. SCHWARZ. Mr. Cotter, you took over as Chief Postal Inspector for Mr. Montague in the spring of 1969?

Mr. COTTER. That is correct.

Mr. SCHWARZ. And the mail-opening project lasted from January—February of 1973; is that right?

Mr. COTTER. That is correct.

Mr. SCHWARZ. When you took over—because you had served in the CIA, in the Office of Security and indeed, had served for awhile in New York, where the job was done—you knew the CIA was opening the mail?

Mr. COTTER. That is correct.

Mr. SCHWARZ. You knew, did you not, that opening of first-class mail was something that was improper?

Mr. COTTER. That is correct.

Mr. SCHWARZ. Now, you never disclosed to Mr. Blount, or anyone else within the Post Office Department or to anybody outside the CIA, that this improper and illegal activity, which you knew about was going on, did you?

Mr. COTTER. I did not brief the Postmaster General, or anyone else in the Postal Service.

¹ See p. 206.

Mr. SCHWARZ. Or anybody else outside the CIA?

Mr. COTTER. Or anyone else outside the CIA. However, I believe I was instrumental in bringing about a briefing of the Postmaster General by the Director of Central Intelligence.

Mr. SCHWARZ. And that, you did about 2 years after you took over the job?

Mr. COTTER. That is correct; in June of 1971.

Mr. SCHWARZ. Let us focus, then, on the 2-year period before that was done, and why you felt inhibited from disclosing the activity which you knew was illegal, which was being carried on in a postal operation under your jurisdiction and where your specific responsibility in the Post Office Department was to make sure that the mail wasn't tampered with. Wasn't that your specific responsibility?

Mr. COTTER. Yes, sir.

Mr. SCHWARZ. All right. Why didn't you disclose it?

Mr. COTTER. Might I back up a little bit, Mr. Schwarz?

Mr. SCHWARZ. Why didn't you disclose it yourself, and why didn't you stop it?

Mr. COTTER. Might I back up a bit? I became aware of this mail-opening project of the CIA in 1952-53, when I was assigned to a CIA field office in New York City. At that time, the project was just starting. It wasn't a very big project. They started it with actually just reviewing the exterior of the envelopes, and that is the way they laid the project on with the Postal Service. However—

Mr. SCHWARZ. That was misleading, wasn't it?

Mr. COTTER. Indeed. However, I believe, in 1953, they started to select certain letters coming from the Soviet Union—that was all mail, at that time, either addressed to the Soviet Union or coming from the Soviet Union—they started to select certain letters and surreptitiously appropriated the letters, opened the letters, photographed the contents, and returned them to the mail stream.

I left New York City in December of 1955, and the project, really, at that time, still was rather small, and quite frankly, I was astounded when I saw the statistics recently as to the mail volume. I returned to Washington. I served with the CIA in many different assignments, beginning in January of 1956, and I was not directly connected with this project. However, I knew it was going on. I saw the same personalities in New York, and so there was no question in my mind but that this program was continuing.

However, I was not briefed; I was not privy to the effectiveness of the program, who was being covered. Someplace along the line—and maybe it was later—I picked up the fact that the FBI was also the recipient of the product of this project.

But in April of 1969, as is claimed by Mr. Blount, I was offered the opportunity to be appointed Chief Postal Inspector. This particular project was not at the fore of my mind; however, it was at the back of my mind. I was aware of it; it was a matter of concern to me, from the very outset. However, I did accept the position.

I was not briefed on the project by anyone in the Postal Service. I don't recall what Mr. Montague told me about it. He did brief me, in a matter of a few days. He may have mentioned a special project in New York City. I don't recall offhand. But certainly, no one told me, or there was no record in our files as to the nature of this particular program.

Mr. SCHWARZ. Of course, you felt you couldn't go look, because if you did look, you would find out something you already knew about, and then you would have to expose something you didn't want to expose, because the CIA wanted to continue it? Isn't that fair?

Mr. COTTER. Well, there's no question about it. After coming from 18 years in the CIA, I was hypersensitive, perhaps, to the protection of what I believed to be a most sensitive project, and I did, indeed, truly believe that that was a most sensitive project. And I did, indeed, believe that, over these 13 years since I became aware of it initially, I believed that it had been approved at the highest levels of government.

But in any event, I did not go out seeking out this project, and where was it in New York City. As Mr. Montague indicated, the responsibilities of the Chief Postal Inspector are quite broad, and moving into the Postal Service initially, without any postal background, it took me some time to really get my feet on the ground and to accept the challenge that this very, very fascinating and important position held.

I maintained no records with regard to my reactions as to this unauthorized program being carried on in the Postal Service. There again, perhaps it was due to my sensitivity in not recording anything pertaining to a sensitive project. I did, as I left the CIA—I mentioned in previous testimony—I did sign a secrecy agreement, secrecy oath, attesting to the fact that I would not divulge secret information that came into my possession during the time that I was in the CIA.

As I say, I have no record to substantiate exactly how I expressed my concern, but I think perhaps the records of the CIA will indicate that periodically, perhaps starting in 1969—I don't recall specifically—I did express my feelings to the people in the CIA that I was very much concerned about the continuation of this project.

Mr. SCHWARZ. That's true. The record does show that.

Mr. COTTER. Now, in January of 1971—I entered on duty as the Chief Postal Inspector in April of 1969—moving into January of 1971, I received a letter from a gentleman who was the perhaps secretary, executive secretary of an association of scientists, and this letter—on the letterhead, it listed some very distinguished gentlemen in the world of science, including a former Deputy Director of the CIA, a couple of gentlemen whom I recognized as having been scientific advisers to the President, and a lot of gentlemen of that caliber.

Well, this letter raised the question as to whether or not mail was being opened, perhaps being referred to in other Federal agencies as being open, and so on; specific question that would appear to me, and undoubtedly did at that time, indicate that whoever wrote the letter was aware of this CIA program in New York City. That letter went to my staff. My staff prepared a standard response which avowed that the rules of the organization do not allow the opening of mail. That is the responsibility of the Postal Service, to maintain the sanctity of the mail.

Mr. SCHWARZ. You mean a standard false report?

Mr. COTTER. No; not knowingly. Staff prepared a standard true response from all the information available to them. However, I signed it, and I knew it wasn't true. And I signed this letter, and sent it to the gentleman who sent the letter to me. At the same time, I was very much concerned about the letter, because it appeared to me that

the project was known, and I wouldn't be surprised—I wouldn't have been surprised at that time, because it had been going on for ever so many years.

And as I say, I noted distinguished personalities on the letterhead of this letter who had been with the—or one gentleman who had been with the CIA—and others in very high positions in the Government, and since I was always under the impression that the project had been cleared, or approved at a very high level in the Government, I presumed it was indeed possible, if not probable, that these gentlemen were well aware of this project.

I sent that letter—a copy of that letter that I received—to the CIA, via Mr. Howard Osborn, the Director of Security, undoubtedly expressing my concern. However, I maintained no written memorandum for the record. Shortly thereafter—and I say shortly, because sometimes 6 months is a short time, but that was in January—I undoubtedly sent that letter January of 1971, I sent that letter to the CIA.

Then I noticed—I was not aware of this, however—after Mr. Colby announced the fact that they had been opening these letters for 20 years, I did request the CIA to let me know what the CIA had told the President or the Rockefeller Commission as to this mail program, since I was caught in the middle of this thing. And they did permit me to review a CIA folder on the project. And in that folder, it indicated that subsequently they had discussed this particular letter I sent to the CIA, and after pros and cons as to the project, whether they should continue the project or stop the project, Mr. Helms, I believe, suggested to talk the matter over with me, and subsequent communications, for the record, indicated that, indeed, that meeting was held and it was held.

At that time, I expressed—I don't recall exactly what the discussion with Mr. Helms was, but undoubtedly, I indicated to him that I was not interested in getting into the details of more than I already knew of most sensitive CIA projects, but I did highlight the fact of my concern, typified by this letter that I received from the scientific group, and suggested that if the project had not been currently approved at the highest level, such action should be taken. It was decided by Mr. Helms to brief the Attorney General and the Postmaster General. He told me that he would talk to the Postmaster General, and I left.

A couple of days later, as I recall, I received a telephone call from the Postmaster General, and he said something to the effect that, "Bill, I saw your former boss, Dick Helms, yesterday, or the other day"—and I don't recall, again, specifically what he said, but I understood him to mean: carry on with the project.

The CHAIRMAN. Was this Postmaster Blount?

Mr. COTTER. Yes, sir; Postmaster General Blount. Now, I must restate, however, that I am not aware, and I've never spoken to anybody as to specifically what conversation transpired between Mr. Helms and Mr. Blount.

I also understood that just about that time—whether or not the Postmaster General mentioned it to me, I don't recall—that the Attorney General also was briefed, and I assume that he was briefed with regard to the complete nature of the program, but I cannot certify that observation. So this is in the middle of June of 1971.

Now, time went on, and Postmaster General Blount did leave the Government not too long after that to run for the Senate, and Mr. Mitchell, I guess, left his position of Attorney General the next year.

Now, I didn't sit down with Mr. Blount subsequently and chat with him with regard to what Mr. Helms spoke to him about. Here again, perhaps I should, but the way—again, my whole history of being in the intelligence business has not been to pursue things and take short communication and accept that at its face value.

So, subsequently, after Mr. Blount left the Government service, and the Attorney General left the service, undoubtedly during this period I continued to express my concern, still, at the office, about the continuation of the project and, in fact, toward the latter part of 1972—

Mr. SCHWARZ. Excuse me, Mr. Cotter, didn't you then tell Mr. Klassen about the project?

Mr. COTTER. I did not. I didn't even take the initiative to ask whether or not Mr. Blount had briefed his deputy, Mr. Klassen, who was deputy. I did not take the initiative, because I decided to continue pressuring the CIA for a halt in the program.

I didn't feel it appropriate for me to take the initiative to stop the program myself. I still was under the impression that it was a project of most significant sensitivity to the United States. I had the idea going way back to 1953, 1954, 1955. For example, the project was designed to endeavor to identify illegal agents in the United States, that type of thing, very, very significant thing. And it has been touched upon before.

Whether or not that was the purpose, I don't know, but to me, that was a very, very important mission to try and locate the type of fellow that they found up in Brooklyn, and traded for Gary Powers, who had been there for years, assuming that the communication directly between the United States and the Soviet Union was used as a vehicle for innocent communication to agents from the United States and back home.

Another fact, or someone suggested to me, why did I go to Dick Helms, to the Director of Central Intelligence and brief the Postmaster General, the Postmaster General Blount. Why didn't I just take the initiative? Now, I was constrained too by my secrecy oath, but I surely could have gotten in touch with the CIA and requested a release from that secrecy oath to enable me to brief the Postmaster General. Mr. Helms well may have said go right ahead, or his staff members down below. I don't recall if I raised the question, but I must say this thing too, as a postscript: I don't think I would have been very effective in briefing Postmaster General Blount, or the Attorney General or anybody else as to the nature of the project, if they were going to be given an in-depth briefing, because I really didn't know—I knew it was a very small, sketchy project back in the 1950's. I was not aware, for example, as I mentioned before, as to the volume of mail being run through this operation, and so on.

So, in any event, in 1972—

The CHAIRMAN. I think we have the story, and I want to say, first of all, before I go on to my questions, that it is my understanding that you have an excellent record in the Post Office Department with respect to the general discharge of your duties there.

Now, when you took over as Inspector General, you understood that your new responsibility was to see to it that the mails were handled by the Post Office Department in a lawful, proper way. That was your duty, was it not?

Mr. COTTER. Indeed, Senator Church, and I even became much more aware of it as each month went by, because of the sensitivity of postal

inspectors to their basic responsibility of maintaining the sanctity of the mails.

The CHAIRMAN. Right. So you had this basic responsibility, now that you had left the CIA, you had come to the Post Office Department, to protect the sanctity of the mail. Now, suppose you didn't have that secrecy agreement. Just for the benefit of those who may not be aware of it, every employee of the CIA signs an agreement with the Agency that he will not reveal any secrets that he may take with him after he leaves the Agency. And if it had not been for that secrecy agreement, when you became the Inspector General, knowing that the mails were being improperly opened by the CIA, the first thing you would have done, would it not, would have been to go to the Postmaster General and say, "Look, I know something that you may not know about, and there are a lot of letters being opened and that is against the law?"

Now, I am saying, if you didn't have that secrecy agreement which you took with you when you left the CIA and entered the Post Office Department, and had you not felt bound by it, that surely would have been the first thing you would have done, isn't that correct?

Mr. COTTER. I don't know, Senator Church.

The CHAIRMAN. If it is not correct, why not?

Mr. COTTER. Again, as I indicated, I was very, very sensitive to the need to protect most sensitive intelligence operations. Now, recognizing that the heart of what you're driving at, I agree that I could—well, regardless of quite frankly, the secrecy oath, I could have communicated to the Postmaster General the fact that this project was going on, but I do believe that the way I went, although 1971, June of 1971, was the most sensible way to go, to request—

The CHAIRMAN. But you waited, 4 years was it?

Mr. COTTER. A year and a half. The thing that triggered me off was January of 1961, which would be from April of 1969 to—

Mr. SCHWARZ. 1971.

Mr. COTTER. 1971, I beg your pardon. From April of 1969, I came on board getting my feet on the ground for a while. In January of 1971 I received that letter from the scientific group at which point I really pushed. Now, I may have been pushing before that time, Senator, and I have no record. I would suggest perhaps the CIA files show something.

The CHAIRMAN. Let me go to that letter then. You say that was perhaps the triggering device, the letter? You received on January 13, 1971 a letter from Jeremy J. Stone, the director of the Federation of American Scientists. And Mr. Stone raises some questions concerning how the Post Office Department is handling the mail. And among those questions was the following: "Has the Post Office ever discovered efforts by State or Federal agencies to corrupt postal officials to violate mail covering regulations by inducing them to open first class mail or to lend it to other agencies for the purpose of obtaining information contained therein?"

On February 10, 1971, you wrote back to Jeremy Stone and you said in part:

The Department has no knowledge of any efforts by State or Federal agencies to induce postal officials to violate the mail cover regulations or to allow any class of mail to leave the custody of official postal channels for the purpose of permitting other agencies to obtain the information contained therein.

Now, that was a falsehood?

Mr. COTTER. That is correct.

The CHAIRMAN. And you knew it to be when you signed the letter?

Mr. COTTER. That is correct.

The CHAIRMAN. Now, having done that, as the man who held the office, whose duty it was to protect the sanctity of the mail, what was your chief concern? I took it from your testimony that your chief concern was that Mr. Jeremy Stone's letter itself signaled that the word might be out and that citizens of the country might have heard something that gave them reason to suspect that this program was going on. And, therefore, you became alarmed. Was that your first reaction to the receipt of this particular letter and was that the motive that stimulated you then to consider taking it up with higher authority?

Mr. COTTER. I think indeed there was no question at all, Senator Church, that I did react in that direction. Whether or not it was my primary reaction at the time, or secondary, I don't recall.

Might I just add an aside here at this point, Senator?

The CHAIRMAN. Yes; certainly you may. But what I am trying to really get at is this problem of serving two masters. You see, you were trained in the CIA all of these years and you see the world from that peculiar perspective. And then you come on with new duties and you are still largely influenced by your previous perspective. We see it all the time, military officers going into the munitions industries and the close relationship, the tie-up between the two and the great costs that are sometimes entailed as a result, contract overruns and all of that.

So, I think it is important here to try to determine how, wearing these two hats, even though you had left the Agency, still being so strongly influenced by it, affected your new responsibility to the Post Office Department.

Mr. COTTER. I don't think there is any question, Senator, that my long service with the CIA had an influence in my judgment and my reactions.

Might I say just one item that gets into maybe perhaps the area of controversy; but, you know, going way back in the fifties when I first became exposed to this type of operation and many, many other very fine officers of the CIA, dedicated great Americans at a time when the Cold War was at its peak, and that sort of thing, and fighting the big fight against the KGB and all of that, I don't think the majority of us, in the CIA, reacted to this as an unlawful, illegal operation.

We assumed that perhaps the powers that be up on the high had obtained necessary approvals for this project. Now, this area had been touched upon by other people. You have been over it very clearly yourself, Senator, as saying there is no question at all what the law says, the fourth amendment and so on, with regard to the sanctity of the mails. And I agree wholeheartedly with that, but some of the gentlemen have brought up, perhaps Mr. Colby, perhaps Mr. Day, touching upon an area that—well, is it or isn't it—is it absolutely, finally, positively illegal?

And I say, with regard to that question, I would have to defer to the Justice Department. Why—point one, this is not like in the Huston plan case where they were talking about mail covers. I really think what they were trying to do was persuade the FBI to use the

mail opening domestically. This thing over here was totally foreign, the Soviet Union and the United States.

So, I would say whether or not—and I wouldn't debate this thing because I don't have the knowledge or the background—whether or not it would be within the power of the President of the United States in the foreign relations area—and this is foreign intelligence business—to authorize this type of a program to the same degree that he can perhaps authorize a wiretap, as it affects international foreign relations, which point, I understand, has not been resolved precisely finally yet.

So, I just bring that up as to that also affecting my thinking, for example. When I joined the Postal Inspection Service I had that feeling, the old CIA feeling that perhaps this project was a specially approved program and authorized regardless of title 18, fourth amendment, and so forth.

The CHAIRMAN. All right. I understand the quandry you were in that eventually led you to do the right thing, in my judgment.

How did you get this job in the Post Office Department after having left the CIA? Can you tell me if Mr. Helms urged you to take this job?

Mr. COTTER. Might I back up a little bit to give a little of my background to show why I was perhaps considered for this position?

Back in 1942, 1946, I was a captain in the Air Corps, Army Air Corps, then I was special agent of the FBI from 1947 to 1951, and in 1951 to 1969, I was in the CIA.

I had just come back from overseas around 1967, in 1968, early 1969, perhaps January 1969, I was in an extremely fascinating job. I hadn't left the CIA. I was still with the CIA and I had another. As always, my positions with the CIA were challenging and fascinating. I had a call from the Director of Security one day in the early part of 1969 asking me "how would you like to be promoted to grade X?" And I said "I will take it." He said, "Seriously, the Postmaster General has queried the Director of Central Intelligence as to whether or not he might have some candidates for the position of Chief Postal Inspector."

And I said, "Well, I would like to think about it." And they said they would need the answer in a hurry so I said, "All right, throw my hat in the ring." And that ties in, as I heard later, from the discussions with Mr. Blount, that is exactly what happened. He requested candidates from Mr. Hoover, from Mr. Helms, and from a lot of other people. In fact, they had to provide a big, long list to the Civil Service Commission, perhaps 45 or 50 people who were the candidates for this position.

I was invited over to meet Deputy Postmaster General Klassen and Postmaster General Blount, and, of course, my predecessor, Henry Montague. And after some conversation they said they liked my background. My background was a blend. I had majored in accounting. We have the internal audit function in the Postal Inspection Service. I also studied law, although I did not practice law and I had law enforcement background and so forth.

So, they concluded that this balance of my background qualities made me a fine candidate for the job and they offered me the job and I accepted the position. I didn't know anybody. I don't think I had spoken to Mr. Helms, maybe once prior to that time, and I haven't spoken to him since, except for the 1971 meeting.

The CHAIRMAN. Senator Schweiker, do you have questions?

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Montague, we have a considerable amount of testimony by Postmaster General Gronouski about his relationship with the Long subcommittee investigating the invasion of privacy. And you had testified that you knew Government agencies were given direct access to the mail. To our committee you gave testimony and you testified back in the time of the Long hearings. I would just like to read a question from Senator Long to you.

Senator LONG. "Did you know at any time that mail that has been placed under cover, like that, is taken by the supervisor out of the Post Office or any other postal official and given to any other agency of the Government and permitted to be taken out of the Post Office facility?"

Mr. MONTAGUE. 'No.'

Senator LONG. You had no personal knowledge of that?

Mr. MONTAGUE. That is correct, yes, sir.

I wonder if you could help this committee understand the difference in that response?

Mr. MONTAGUE. Yes, sir. In the first place, it was my impression that the committee at that time did not want to get into national security cases. If you would look at the report the committee—the chairman—stated that they had not interviewed or looked into the activities of the FBI, the CIA, or the military intelligence agencies. Also, those agencies were not requested to answer the questionnaire, which the other agencies involved in the inquiry had to answer.

In posing a question regarding two incidents during this hearing, and this occurred shortly after the question that you have, Senator—according to my recollection, the chief counsel for the committee—cautioned me on two things: (1) that if my reply would disclose some implications about a national security case that I should not answer it; and (2) that I should remember I was still under oath.

And also I have a recollection that during the investigation and the other activities connected with that hearing, that in a conversation—Senator Long said that he had advised the Attorney General that he did not intend to become involved in national security cases during, at least, this phase of the hearing.

When I got the question with all this in mind, I am faced with this: My answer to this question could lead into the disclosure of national security matters. It is a case which is not ours. I don't know the particulars of it. I don't know what damage my answer would do if it led into the disclosures. Besides that, at the time I thought it was a violation of the law to disclose information about national security matters. So, I was faced with all of these problems in trying to answer this question. And, under those conditions, I thought I answered it correctly.

Senator SCHWEIKER. All right. You are quite right that the counsel did talk about national security. And, of course, I have Mr. Fensterwald's question here, an admonition to you.

Mr. Montague, I would like to ask you a couple of questions and I want to make two things clear; one, if these questions have national security implications I do not want you to answer them; and two, I want you to realize again that you are still under oath.

Now, again it is hard to go back in this context, but it would seem to me that what he is saying is not that you should mislead the committee, but you should not answer a question if it cut into the area

of national security; this is the way that I would interpret what Mr. Fensterwald said, because he said, "you are still under oath." And then he said, "Are there any exceptions where a letter can be opened in connection with a mail cover?"

No; you say there are no exceptions where a letter can be opened in connection with a mail cover. You are asked by Mr. Fensterwald whether under any circumstances mail could ever be turned over to the Secret Service and you would refuse to turn the mail over to the Secret Service. There is no other course of action that mail cannot be turned over without a warrant. And yet, of course, at the same time you were turning mail over to the FBI and the CIA.

Mr. MONTAGUE. Well, Senator, the Secret Service was not considered by us to be a national security agency. That is, they did not deal, to our knowledge, with espionage cases and things of that sort. We considered the CIA and the FBI and perhaps some of the military intelligence to be in the national security field.

And my answer there to the Secret Service question was based on experience, because we had had a great deal of cooperation with the Secret Service over the years in connection with threatening letters, obscene letters, and violations of that sort which had been addressed to the President. And never, to my recollection, was there any mail cover in which mail was turned over to the Secret Service. So, my answer to that was based on experience.

Now, may I go back to that other question just for a moment? In addition to my quandry about what the committee wanted to get into, and also about the other questions I had with regard to national security, that question followed almost two pages of explanation about a mail cover, which started with a question from the Senator about—suppose a justice of the peace or a constable in St. Louis, Mo., had come in and asked you for a mail cover on a fugitive. Now, how would you proceed?

And then I was trying to explain that all the way through those two pages of testimony. And then we wind up with the question at the end. Now, I could have thought in my mind that this related in context with what we had been talking about because even after that, if you would look at the testimony, I think that there were further remarks made about a mail-cover request by a constable, which could have an indication that we were still in the same context.

In fact, Senator Burdick, I believe, made a remark in that connection. Following my answer to that, Senator Long referred to Senator Burdick. Senator Burdick said, "Mr. Chairman, this sequence of questions and the other question arose in a hypothetical, under the stated facts, that the whole procedure was started with the complaint from a local constable." So that, in addition to thinking about the national security, I could have been under—I could have thought that this was in context with what we had been talking about, and naturally we have never made mail available to any justice of the peace or local constable in connection with a mail cover.

Senator SCHWEIKER. After the public session was over, did you subsequently talk to Mr. Fensterwald or to Senator Long privately and tell them in fact what was happening?

Mr. MONTAGUE. Not to my recollection.

Senator SCHWEIKER. Mr. Cotter, you have testified that you knew of the CIA's mail opening in New York. Yet when the CIA ap-

proached the Post Office to start a program in San Francisco, you apparently did not ask your assistant to watch out for a mail opening in connection with the mail cover project?

Mr. COTTER. I did not. When I joined the Postal Inspection Service, one of the first things I did was to designate someone other than myself to handle liaison with the CIA. When they did indeed contact me with regard to that California survey that they were interested in—I believe that was in the latter part of 1969—I suggested to them to get in touch with my very able Deputy Chief Inspector, which they did.

I did not mention anything to Mr. Conway with regard to the New York thing since I at this point still had not mentioned that New York project to anyone in the New York Postal Inspection Service. I quite frankly did not deem it necessary to warn my deputy, an exceedingly able officer, with regard to that matter. I thought he would lay this project on down the line with due cognizance to the necessity for security.

However, the way it turned out, I see from Mr. Colby and the CIA people, they did indeed gain access to the letters, regardless of the admonition of the Deputy not to remove any letters from the premises.

Senator SCHWEIKER. You did take a very decisive stand on a very critical point, as was commented on before, and I commend you for that. I wonder whether you can give this committee any advice on how to make sure that this kind of thing does not happen in the future and to back up people like yourself when you do feel compelled to blow the whistle, as you did then? What can you tell us that we ought to be doing legislatively or structurally to prevent it from happening and to back people up, such as yourself, in making a judgment that may be useful within an agency?

Mr. COTTER. Well, Senator Schweiker, the point I mentioned to Senator Church earlier in regard to this area that might be fuzzy in some people's minds, maybe a very, very small minority of people with regard to the possible authority of the President in authorizing this type of program, perhaps should be clarified. How, enactment or a law, I don't know.

Another thing—and here again it perhaps might be my fault in not pursuing it further—I assumed that this project was discussed at the highest level of government and had been approved at the highest level of government. Now, I would think that—and the reason I felt it, if I might say, I was involved in the Agency with another most sensitive, highly productive—one of the greatest intelligence programs of all times for about 4 years, and before we made a move, any one single move of this particular project, it was cleared with a special group in the White House.

Therefore, I was under the feeling, and I felt quite confident that this type of operation was cleared at the highest level. Now, I don't know what I'm getting around to recommending here. Perhaps it is recommending that this title—any kind of an operation that might be in the slightest considered as a violation of any law, it should certainly be approved by the Attorney General, all the way up to the President.

The CHAIRMAN. Perhaps we can find out this afternoon when we question Mr. Helms how high the highest level was.

Senator SCHWEIKER. I just want to say I agree with your point that when somebody from an FBI agency or CIA agency comes in and tells you a project is secret, immediate assumptions are formed in your own mind, and I think this is what is wrong with the system. One assumes that if a project is secret, somebody up there knows it and somebody else approves it, and obviously this is not the case, but I can understand that assumption. I think this is what we have to deal with in the committee.

That is all I have, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Mr. MONTAGUE. May I make just one comment, Senator?

The CHAIRMAN. Yes, Mr. Montague.

Mr. MONTAGUE. Along the line of the Long hearings that Senator Schweiker asked about, according to my recollection during that entire hearing there was not one direct question to me on CIA, FBI, or other intelligence agency mail coverage.

The **CHAIRMAN.** Time and time again in the course of this investigation, we have had agents in the CIA tell us—and I think honestly so—that what they did they did because they assumed it was approved. But as we trace the line of authority upward, we often find that the men at the top were not informed and had not authorized the activity.

That concludes the hearing this morning until 2 o'clock this afternoon.

[Whereupon, at 12:58 p.m., the select committee was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will please come back to order.

Our witness this afternoon is Ambassador Helms, formerly the Director of the CIA during much of the period under investigation.

Mr. Helms, would you please stand and take the oath?

Do you solemnly swear that all of the testimony that you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Ambassador HELMS. I do, Mr. Chairman.

The CHAIRMAN. Mr. Schwarz, will you commence with the questioning, please?

TESTIMONY OF HON. RICHARD HELMS, AMBASSADOR TO IRAN AND FORMER DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Mr. SCHWARZ. Mr. Helms, as I informed you during the luncheon recess, the line of questioning I am going to follow will trace what disclosures about the CIA mail-opening projects were or were not made, first to Postmasters General, second to Attorneys General, and third to Presidents. We are going to start with Postmasters General.

Have you before you the chart headed "Postmasters General"?

Ambassador HELMS. I have, Mr. Schwarz.

Mr. SCHWARZ. First, focusing on the not-informed individuals, is it correct to the best of your knowledge that Messrs. Gronouski, O'Brien, Watson, and Klassen were not informed of that project?

Ambassador HELMS. To the best of my knowledge, sir, that is correct.

Mr. SCHWARZ. With respect to Mr. Summerfield, who was the Postmaster General from 1953 until the end of the Eisenhower administration in January of 1961, is it correct that you and Mr. Dulles went to see him in 1954 to tell him something?

Ambassador HELMS. Yes, sir.

Mr. SCHWARZ. What did you tell him?

Ambassador HELMS. Mr. Schwarz, may I note, I think it would save time for both of us, I will assume the dates on your paper are accurate. I mean, I don't want to have to verify them each time. I would just as soon we got the dates straight, but I don't want you to hold me in jeopardy if one of them is wrong.

Mr. SCHWARZ. All right. We never tried to hold you in jeopardy, Mr. Helms.

You went to see Mr. Summerfield along with Mr. Dulles and told him something. What did you tell him?

Ambassador HELMS. Well, I wrote a memorandum after Mr. Dulles and I had been to that meeting, a memorandum for the record I guess you would call it; and I believe, as was the custom at the time, that I sent the memorandum to Mr. Dulles so that he would see what I had written about the meeting, and that was so long ago that I can only say that what is in that memorandum I would be glad to vouch for today.

Mr. SCHWARZ. All right. So, you agree then, that based upon the memorandum, what you told Mr. Summerfield was that the Agency wanted to photograph the backs and fronts of first-class mail to and from the Soviet and satellite areas?

Ambassador HELMS. I think it was in that general ball park, that kind of conversation; but the details of it, I am sorry, I cannot go any further than what the memorandum says.

Mr. SCHWARZ. And the memorandum indicates that you did not tell him that mail was going to be opened, is that right?

Ambassador HELMS. Yes, sir.

Mr. SCHWARZ. Did you say that I was correct when I said that?

Ambassador HELMS. What I'm trying to—the only thing I'm trying to correct is that most of the talking at that meeting was done by Mr. Dulles and not by me. I was very junior at that time and very young, and Mr. Dulles was a quite articulate individual, and he carried the burden, there is no doubt about that. So, when you say did I say this, that would not be a correct description. It was he that was doing the talking.

Mr. SCHWARZ. All right. But, just let us make the point clear. What was told by Mr. Dulles to Mr. Summerfield was that the Agency wanted to photograph the fronts and backs of envelopes and not that the Agency had photographed or wanted to photograph the insides, the letters themselves.

Ambassador HELMS. It is my opinion today from reading the records that he was not told the mail was being opened or would be opened.

Mr. SCHWARZ. All right. And, he was never told, as far as you recall, and as far as the CIA records show between 1954 and leaving office in 1961, is that right?

Ambassador HELMS. I just don't know, sir.

Mr. SCHWARZ. Or you don't recall.

Ambassador HELMS. I haven't seen any record.

Mr. SCHWARZ. And you don't recall doing it?

Ambassador HELMS. I don't recall doing it. But whether Mr. Dulles did or not, you see, is something. He used to see a lot more of Mr. Summerfield than I did.

Mr. SCHWARZ. And you don't recall Mr. Dulles telling you that he did any such thing?

Ambassador HELMS. No; I don't have any recollection.

Mr. SCHWARZ. All right.

Now, when Mr. Day took over at the start of the Kennedy administration, did you go see him?

Ambassador HELMS. Yes; we did. I believe there were three of us, the memorandum [exhibit 10¹] shows, that we went to see him. Mr. Dulles was the Director and Mr. Roosevelt, Cornelius Roosevelt in this case, who was Chief of the Technical Services Staff, and myself.

Mr. SCHWARZ. All right.

Then you wrote a memorandum about that meeting indicating that you had briefed, or that the group of you had briefed Mr. Day and that you had withheld no relevant details. What did you mean by that?

Ambassador HELMS. Well, it is 14 years ago, and I have to be fair enough to say that this conversation is not all that clear to me anymore. If I wrote that memorandum the next day, which I believe I did, it would have been much more accurate, and I would like to stand on the memorandum. I think what I said was at our meeting any relevant details, we told him the truth about the project. I think Mr. Dulles did tell him the truth about the project.

Mr. SCHWARZ. And by telling the truth, you mean that in the case of Mr. Day you told him mail was being opened?

Ambassador HELMS. It is my impression today—that is the way I interpret it. But I can't go any further and I would not want to say that my memory is that infallible.

Mr. SCHWARZ. Let's skip the people who followed in the Kennedy and Johnson administrations that weren't told about the mail-opening project.

Approximately when did you meet with Mr. Blount? Was it June of 1971, as the records show?

Ambassador HELMS. Right.

Mr. SCHWARZ. That was about 3, 3½ years after he took office?

Ambassador HELMS. Yes.

Mr. SCHWARZ. Now, you heard his testimony this morning, did you?

Ambassador HELMS. Yes; I did.

Mr. SCHWARZ. Is your version of the facts the same as his?

Ambassador HELMS. I think basically yes.

Mr. SCHWARZ. Well, he denied that you told him that the mail was being opened.

Ambassador HELMS. Well, I'm just coming to that one point. He said a lot of things this morning and I wanted to try and be as factual as possible.

¹ See p. 210.

I no longer know exactly what documents I took along with me or what pieces of paper, to be more precise, that I took along with me when I went to brief Mr. Blount. But I thought I took along a couple of pieces of paper that would have indicated what we got out of this mail in the way of information and so forth.

Mr. SCHWARZ. You mean actual letters, not just photographs of envelopes?

Ambassador HELMS. Well; I think this was—I just don't recall anymore what the pieces of paper were. There may be somebody in the Agency who provided them to me, you know, at the time, who might have some recollection of what they were. But I thought I had some typewritten documents that would have indicated that we had seen, been reading correspondence between certain individuals in the United States and certain individuals in the Soviet Union.

Mr. SCHWARZ. You mean typewritten documents but not photocopies of the opened letter?

Ambassador HELMS. I think they were just copies of the contents, if I recall. Or it may just have been a memorandum in which there were a group of headings saying we got this, we got that, we got the other thing. And, since I don't remember, and since Mr. Blount's memory is different than mine, I don't want to get down to the degree of precision here that I can't support because he is a very honorable man, Mr. Blount, and I would just not want to be in the position of making assertions that I couldn't demonstrate that were contrary to his.

But I do recall taking something down there because I was interested in persuading him that this was an interesting and worthwhile operation, even though very sensitive.

Mr. SCHWARZ. Is it your testimony, or isn't it your testimony, that you told him that the CIA was opening letters?

Ambassador HELMS. Well, I thought so, but maybe I wasn't specific enough about it. I don't know—I thought that this was the general purport of it and that to get information out of the letters you would have to open them.

Mr. SCHWARZ. Now, turning to the Attorneys General, was Mr. Mitchell the first Attorney General, to the best of your knowledge, that was informed about the CIA's mail-opening project?

Ambassador HELMS. To the best of my knowledge. But I think it is only fair to say that I didn't know what Mr. Dulles, Mr. McCone, and Admiral Rayburn might have been vis-à-vis various Attorneys General and what they might have been talking about. So, it is only my recollection that he was the first one.

Mr. SCHWARZ. But you weren't told that anybody else—

Ambassador HELMS. Not that I recall.

Mr. SCHWARZ. All right. Now, what did you tell Mr. Mitchell?

Ambassador HELMS. Well, my recollection is that I went to see Mr. Mitchell, as I did on various occasions because, as you will have noticed in my deposition, when I went to see then President-elect Nixon in New York and was asked to stay on as Director of Central Intelligence, he had Mr. Mitchell sitting with him, and I had never met Mr. Mitchell before, and he told me on that occasion that anything that I could say to him, I could say to Mr. Mitchell, either in front of him or separately.

Then, when Mr. Mitchell came to Washington and became Attorney General, it was quite clear that he had a particular role for the President in sort of keeping an eye on intelligence matters and on covert action matters, and just a variety of things. He was sort of, I think, a watchdog for the President. So, I have consulted with Mr. Mitchell on a variety of the problems affecting the Agency over time that I would not have gone to the normal Attorney General about, nor would the normal Attorney General have been necessarily privy to these things.

So, on this occasion, as I remember the unrolling of the circumstances, Mr. Cotter and I had had a conversation about this operation, and one of the points that he made and I thought the principal point was, that pretty soon the Post Office Department was going to be changed to the U.S. Postal Service.

Mr. SCHWARZ. He denies, incidentally, that that was his reason. But that is beside the point.

Ambassador HELMS. That's all right. I'm just telling my story as I recall this, and this occurred to me as being a perfectly sensible and desirable thing, to try and find out if under a new management and a quite new series of guidelines this operation was going to be viable.

So, I went to the—as I recall the thing, and I am supported by a memorandum that somebody wrote near that time that the Attorney General first, and I think maybe among several matters that I had to take with him on that occasion—I told him about this operation, what it was doing for us, that it had been producing some information on foreign connections, dissidents, and terrorists, a subject in which he was intensely interested, and that we might have a problem when the U.S. Postal Service was founded. And I asked if it wouldn't be a good idea that I go and see the Postmaster General, Mr. Blount, and talk with him about this and see how he felt about it and to get some advice from him. And, it was my recollection that Mr. Mitchell acquiesced in this and said, "Go ahead and talk to Mr. Blount."

Mr. SCHWARZ. No, Mr. Helms, in that answer you used a vague term. Let us try to clarify it. You say you told him about this operation. Now his recollection of the meeting is that you told him about a mail cover operation. Now, is it your testimony that you told him about a mail-opening operation?

Ambassador HELMS. Well, I can only say, Mr. Schwarz, to be fair to everybody concerned, that I am not sure that everybody in Washington is as nearly familiar about the distinction between these two things then as they are now. I mean, everybody in this room knows exactly what the two things are, but in those times, I am not sure that necessarily the Attorney General would have known the difference. I do not recall, therefore, being in a battle of terminology with him. I thought I had gone down to explain something that was going on and the usefulness of the information we had, and, in fact, we would like to preserve the operation, that we were going to have a problem.

Mr. SCHWARZ. That just is an unsatisfactory answer. Did you tell him you were opening the mail or not?

Ambassador HELMS. I'm sorry you find it unsatisfactory because I don't recall whether I said specifically we are opening X numbers of letters, but the burden of my discussion with him—I don't see how it

could have left any alternative in his mind because how do you find out what somebody is saying to another correspondent unless you have opened the letter?

Mr. SCHWARZ. All right, so, you did tell him.

Ambassador HELMS. That is my recollection.

Mr. SCHWARZ. Did you tell him information about what could only have come from the contents of the letters?

Ambassador HELMS. I thought so, sir. If his perception is different, then I'm sorry. Maybe legitimately so.

Mr. SCHWARZ. Other than Mr. Mitchell, no Attorneys General that you know of were briefed on the CIA's mail project?

Ambassador HELMS. That is correct.

Mr. SCHWARZ. On the subject of Presidents, did you speak to President Eisenhower?

Ambassador HELMS. No; it would have been most unlikely that I would.

Mr. SCHWARZ. Did Mr. Dulles ever tell you that he had done any such thing?

Ambassador HELMS. I don't recall any more. I must say that I have been under the impression for a long time that I would have thought Mr. Dulles would have told President Eisenhower or possibly his own brother, who was then Secretary of State, with whom he was in constant communication, but I do not recall ever seeing it in writing, nor do I recall Mr. Dulles taking me aside and saying, "I have cleared this with President Eisenhower now." But then that is a long time ago and it would not have loomed large in my life at that time, if he had said it one way or another.

Mr. SCHWARZ. Did you speak to President Kennedy?

Ambassador HELMS. I never recalled discussing it with President Kennedy.

Mr. SCHWARZ. Did either Mr. Dulles or his successor, Mr. McCone, tell you he had spoken to President Kennedy about the CIA's mail-opening project?

Ambassador HELMS. I have no recollection of being told any such thing.

Mr. SCHWARZ. Did you speak to President Johnson?

Ambassador HELMS. I have often thought, as I have mused over these things for the past month, that it was an item that I mentioned to President Johnson on one occasion when I was going over some sensitive thing the Agency was doing. But I have no written record of this. I have no piece of paper on which I jotted notes or anything else to support this belief of mine. So, I can only just tell you that it was a belief I had. And, one of the reasons that this lingers was that Postmasters General in President Johnson's administration, except for Mr. Gronouski, I knew quite well. I knew Marvin Watson well; I knew Larry O'Brien well, and if I felt there was some real need to talk to them about it, I wouldn't have hesitated.

Mr. SCHWARZ. All right.

Would you look at exhibit 7¹ please, which is a memorandum for the files dated April 23, 1965?

Ambassador HELMS. Yes.

Mr. SCHWARZ. You have had a chance to see these before. I particularly want to call your attention to paragraph 7, and ask whether that

¹ See p. 203.

paragraph of the document does not at least strongly suggest that if you had any such conversation with President Johnson as to which you have given your best evidence, it could not have been until after April 23, 1965?

Ambassador HELMS. Well, as a matter of fact, if I discussed it with President Johnson, it would have been in the context of a particular private meeting I had to discuss some sensitive things, and it would have been a good 2 years after.

Mr. SCHWARZ. A good 2 years after 1965?

Ambassador HELMS. After 1965.

Mr. SCHWARZ. So, if you discussed it with President Johnson, it was at the earliest 1967, which was 4 years after he took office?

Ambassador HELMS. I think it was in the spring of 1967.

Mr. SCHWARZ. All right.

Now, with respect to the last President in office during your activities at the CIA, did you disclose to President Nixon the CIA mail-opening projects?

Ambassador HELMS. I never recall discussing it with President Nixon and what President Nixon knew about it, I don't know to this day. He was Vice President for 8 years; he was involved in a lot of things in President's Eisenhower's administration and saw a good deal of Mr. Dulles, and what matters he was specifically briefed on by Mr. Dulles and which he was not, I don't know. I do know that he never got into these matters when he became President; at least, he never got into them with me. And, as far as I was concerned, when I got around to talking to the Attorney General, Mr. Mitchell, I felt that if he felt any need to go to the President, he would have told me so right then and there and would have taken care of it with the President, which he did on other matters.

You will recall, that when I was talking to him about the Huston plan, and he said, "well, I had never heard about this until this morning and so forth, now let us wait until I have a chance to talk to the President," it is quite clear that he had that option any time he wanted to, and it was my feeling, if not my understanding—I never got this regularized with him—when I went to him and talked about any matters affecting the Agency, that if he wanted me to halt, cease, or desist, he could do so and talk to Mr. Nixon.

Mr. SCHWARZ. So, in any event, you didn't yourself speak to President Nixon?

Ambassador HELMS. No.

Mr. SCHWARZ. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Smothers, do you have any questions?

Mr. SMOOTHERS. Is it your belief that Mr. McCone was aware of the mail-opening operation?

Ambassador HELMS. Well, Mr. Smothers, I have been told in the last several days—as a matter of fact, I don't think I have been told, I think I heard it asserted here yesterday, that it was Mr. Osborn who was testifying, or someone that Mr. McCone says that he was not informed about the mail-intercept operation. I can only say that I don't know from my own certain and specific knowledge whether he was or he wasn't. He was Director for 3 years, he was a first class executive. I think he had a reputation for that. He certainly had access to everything that was going on inside the organization, and I just find it difficult to think that he didn't know anything about it,

although there is always the plausible explanation that things he saw—he wasn't an expert in the intelligence business necessarily, he might not have known where these things came from. But that is merely a supposition on my part, which might give rise to these explanations because at this time, as I recall, there was a lot of going and coming in the Agency about the Kim Philby case, where it was a question of it's being ascertained beyond any doubt that a member of the British Intelligence for many, many years, a man who had also been liaison officer here in Washington with the CIA, was a Russian agent. And some of this showed up in this mail intercept business, and I'm sure that Mr. McCone would have been briefed by Mr. Angleton who saw him constantly on matters of one sort or another. But, he may just have forgotten this was where it came from. I don't know.

Mr. SMOOTHERS. You are probably as close to an expert as any on both the question of how the Agency operated and indeed the nature of the way Mr. McCone operated. Would you consider it more probable than not that McCone knew about the mail-opening operation?

Ambassador HELMS. I think it is a little unfair to ask me that, Mr. McCone can speak for himself. One of the problems, I think, with this hearing is that so many people have died; but he certainly hasn't, and I would rather have him speak for himself.

Mr. SMOOTHERS. We will try to do that.

Let us pass on to your meeting with Mr. Day and your memorandum of February 16, 1961 [exhibit 10¹]. This memorandum was directed to Mr. Angleton, wasn't it?

Ambassador HELMS. This was to the Deputy-in-Chief CI. I would have thought at that time it was a man named James Hunt, but I am not all that good on dates, Mr. Smothers.

Mr. SMOOTHERS. Sure.

Ambassador HELMS. I felt Mr. Angleton was Chief CI.

Mr. SMOOTHERS. That is not critical to my inquiry.

Ambassador HELMS. OK.

Mr. SMOOTHERS. What was the purpose of this memorandum? Why would you have written down the results of your meeting with Mr. Day?

Ambassador HELMS. Because the CIA staff was in charge of at least the planning and the carrying out of this operation, and this was to make official the fact that we had had this meeting and that they had permission to go with the operation, had permission from me to go on with the operation.

Mr. SMOOTHERS. So you were trying to give your managers in the Agency as full an amount of information as they needed to go ahead and carry out this letter-opening function. Is that correct?

Ambassador HELMS. That's the idea.

Mr. SMOOTHERS. In that connection, then, it would be highly implausible, would it not, that you would have communicated to them information that was in error or not true?

Ambassador HELMS. There would be no reason for me to do that, Mr. Smothers.

Mr. SMOOTHERS. Then this memorandum [exhibit 10]—and I think you heard some of the testimony this morning—also indicates that

¹ See p. 210.

after you made your presentation to the Postmaster General, Mr. Day, that you were joined by the Chief Postal Inspector, Mr. Henry Montague. Quoting from that memorandum: "This gentleman"—referring to Mr. Montague—"confirmed what we had had to say about the project and assured the Postmaster General that the matter had been handled securely, quietly, and that there had been no 'reverberations.'"

Was it your impression when you wrote this memorandum that Mr. Montague was in on it, that he knew that letters were being opened?

Ambassador HELMS. Sir, I can only stand on that language. It was written 14 years ago. It was written, I guess, a day after we had the meeting.

Mr. SMOTHERS. Is that what the language says to you?

Ambassador HELMS. That's what it says to me.

Mr. SMOTHERS. I realize the difficulty in recollection. We discussed that meeting an awful lot this morning.

When you, the Director, and Mr. Roosevelt, went down to see Mr. Day, you were then the DDP. What was Mr. Roosevelt's job?

Ambassador HELMS. My recollection is—well, I don't even have to recall it because it's written here. He was Chief of the Technical Service Division, and the Technical Service Division was that part of the DDP Office of the Clandestine Service or whatever you want to say, which would have carried out the actual physical opening of the letters, which after all, I might say, is a difficult thing to do properly so there are no complaints about it.

Mr. SMOTHERS. Did you take Mr. Roosevelt with you to insure that this matter of the mail opening would be clearly explained to the Postmaster General?

Ambassador HELMS. I don't recall why Mr. Roosevelt went on this particular occasion, Mr. Smothers, but I can only assume that since this was his role, that maybe we thought something might come up about it, and we wanted him there to answer any questions from the technical standpoint.

Mr. SMOTHERS. I know it is 14 years later, and I am asking you now to look both at your memorandum and the very high-powered cast of characters that went down to visit the Postmaster General. Is it at all likely, Mr. Helms, that all that took place at that meeting was merely to say, "we have something secret that we might want to tell you"? Then the Postmaster General replied, "I don't think I want to hear it." And after that, the cast of characters simply got up and left?

Ambassador HELMS. That wasn't quite my impression of the meeting, Mr. Smothers, no. We had gone to see Mr. Day because this was a new administration. President Kennedy had just been sworn in. It was also a new party. The Republicans had had the White House and the executive branch before, and now the Democratic Party had it, and I think Mr. Dulles felt under the circumstances that it was desirable to speak to the Postmaster General, because if it was to go forward, we needed some support for it. In other words, this was not a social visit in any sense. It was desired to see if the operation could be continued.

Mr. SMOTHERS. You did not go down trying to hide anything? You went down to try to convince the Postmaster General that he ought to go along with what you were doing; is that correct?

Ambassador HELMS. It was Mr. Dulles who did the talking on that occasion, as he did on every occasion that I went with him, and I

think—I know that was the purpose of our going down there, at least as best I recall it.

Mr. SMOOTHERS. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. Mr. Helms, under which Presidents did you serve as Director of the CIA?

Ambassador HELMS. I was appointed, sir, by President Johnson and I served under him and under President Nixon until early February 1973.

The CHAIRMAN. And as Director of the CIA, you told neither of these Presidents about the mail-opening program?

Ambassador HELMS. I have explained what the situation was as far as President Johnson is concerned. As best I can pull this together I don't recall speaking to President Kennedy.

The CHAIRMAN. And when did you speak to Attorney General Mitchell about the mail-opening program? Was that at the time that the new administration came on, and you wanted to inform the new Attorney General of what was going on, or was that a good deal later?

Ambassador HELMS. It was a good 2 years later.

The CHAIRMAN. A good 2 years later. You were aware that the mail-opening program was illegal, were you not?

Ambassador HELMS. Mr. Chairman, I am not a lawyer, and I think it would be unfortunate to take your time and the time of the committee to get into a debate on matters that are a little bit—well, not only a little bit, but a great deal beyond my purview.

I only want to say that we were given a charge back in 19—the late forties and early fifties. It has not come up in the hearings, at least as far as I know, the ones I've been listening to, and I would like your forbearance for just a moment to explain something.

When the remnant parts of the OSS were picked up and placed as a sort of secret service under the CIA, the Central Intelligence Agency for cover purposes—after all, the Central Intelligence Agency was never designed by law to run espionage or anything of that kind—the National Security Council gave this organization, through the Director of CIA, some specific jobs to do, and in the intelligence field a more specific job was given in the area of counterespionage and counterintelligence, if you would like to call it that, the National Security Council intelligence directive gave the Agency the job of analyzing, collating, and evaluating the counterespionage information.

It also gave it the job of maintaining the basic files for the whole Government on counterespionage cases and in addition it put upon it the job of protecting the U.S. Government, the CIA and its installations, and so forth, from penetration and from any hostile intelligence services or even friendly intelligence services, as far as that is concerned.

Now, this charge was a difficult one, and there were very few methods available for carrying it out and carrying it out with any reasonable chance of success. One of those things is to penetrate another fellow's intelligence service and find out who his agents are, a most difficult job. A second is to find out about foreign agents from defectors from their service. Third are intercepts, signals, telephone calls, mail, anything that one can lay one's hands on, and then overseas there are a variety of surveillance techniques which may or may not work, but those things are always available.

Each one of them is very difficult and tricky in its own right, and I would like to point out that we have established beyond any doubt the number one target of the KGB and the GRU, the two Soviet intelligence services, is the Central Intelligence Agency. So every Director was very conscious of how seemingly unprotected he was against this penetration, but also to keep from having any agents get into this organization, because a great deal of Government information can be tapped by just having one person within the CIA.

The CHAIRMAN. Mr. Helms, given the difficulties that the Director faces in connection with counterintelligence responsibilities, do you believe that this is an Agency that need not obey the law?

Ambassador HELMS. No; and I don't think, Mr. Chairman, that you would find very many of those fine, patriotic people in the CIA that would feel that way. We are trying to get on with our job. We are trying to protect our form of government and our way of life.

The CHAIRMAN. We are not talking about motive. We are talking about a plan that went on for 20 years that everybody recognized was against the law. I am trying not to talk about motives, good purposes, and patriotism. I am trying to find out why a program like this went on for 20 years, was against the law of the country by every indication we have, statutes, the Constitution, the decisions of the Supreme Court, and all I am trying to find out from you is whether you believe that the CIA does not have to abide by these laws because of the problems that the CIA faces. Is that your position, or is it not your position? You can answer that question yes or no.

Ambassador HELMS. Well, I think my position—I don't think things are black or white in this life, and I just simply have to say that I am not a lawyer, and I get a bit confused when I read articles like the one that Alexander Bickel wrote in Commentary in January of 1974 about the various categories of laws in this country, that one supersedes another, and so forth, this all having to do with whether the antiwar movement was illegal or not. I am not a lawyer. I just have to say that I would rather let it go at that.

The CHAIRMAN. Mr. Helms, I cannot let it go quite at that because I think most anybody in the country whether he is a lawyer or not would have a very active suspicion that opening the mail was probably against the law. You do not have to be qualified to argue the case before the Supreme Court not to have that suspicion, and as the intelligent man you are, I can hardly believe that you would not have suspected that this was against the law.

Did you ask your General Counsel in the CIA for an opinion as to whether or not it was legal for the CIA to engage in this kind of activity?

Ambassador HELMS. No; I don't recall having done that, and there are plenty of memorandums, Mr. Chairman, in this record here from various people that claim that this was illegal, so it certainly came to my attention.

The CHAIRMAN. So then it did, and it must have come to your attention that this was very questionable. In fact, the Inspectors General of your own Agency who looked into the program said that in their estimation it produced very little worthwhile intelligence. They were concerned about its illegality, and at one point recommended that it be discontinued.

Ambassador HELMS. Well, sir, I heard the testimony yesterday about the lack of value of the operation, but I had—each time that this question came up about continuing it, I among other things asked for an opinion from the FBI, and I was told on each of these occasions that it was quite valuable to that organization, and I can only say that this is what motivated me to continue, because when I listen to what was said yesterday, if that had been my total appraisal, the operation would have been stopped a long time before.

The CHAIRMAN. So you were conscious of the serious questions of its legality?

Ambassador HELMS. I was, sir.

The CHAIRMAN. And nevertheless, you continued to pursue the program because the FBI indicated that it was interested in the information to which you were referring. Is that your position?

Ambassador HELMS. Yes, sir. You see, the FBI has a job of internal security.

The CHAIRMAN. Yes; I know that.

Ambassador HELMS. Of providing a protective screen for us all, and we have to collaborate with them.

The CHAIRMAN. Well, knowing or suspecting its illegality, why did you never raise this question with the President?

Ambassador HELMS. Well, that's a good question. I think that I was, through the years, affected by the fact that it was Mr. Dulles who started it, that he was a lawyer, and he had a brother who was a lawyer. I believe they were both partners in a distinguished law firm in New York, and I assumed that somehow he had made his legal peace with this, and I must say I just never went around asking for opinions about it later on.

The CHAIRMAN. Well, you were aware in June of 1970 that President Nixon was concerned about the quality of intelligence he was receiving, particularly with reference to antiwar protests in this country, and that he asked the intelligence agencies, including the CIA and the FBI, the Defense Intelligence Agency, and the National Security Agency, to prepare some recommendations as to how this intelligence effort could be improved.

A special report which bears your signature and that of J. Edgar Hoover, General Bennett, and Admiral Gayler, the heads of the four most important intelligence and law enforcement agencies, which is exhibit 11,¹ was prepared for this purpose and sent to the White House, where it later became the basis for what came to be known as the Huston plan.

Ambassador HELMS. Yes, sir.

The CHAIRMAN. Now, if you will turn to page 29, having to do with the question of mail coverage, I read this from the report which bears your signature. It first of all distinguishes between routine coverage which is legal, that being simply the photographing of the information on the face of the envelope, or the taking of that information by other means, and what was called "covert mail coverage," which had to do with opening the mail itself and surreptitiously screening it, and may include the opening and examination of domestic and foreign mail. It says there, "This technique is based on high-level cooperation of top echelon postal officials."

If you will look on the second page, the next page. No. 2: "This coverage, not having the sanction of law, runs the risk of any illicit

¹ See p. 211.

act magnified by the involvement of a Government agency." Then in a statement in which the illegality is acknowledged and sent to the President, the following statement also appears back on page 29: "Covert coverage"—which has been defined as this illegal type of mail opening—"Covert coverage has been discontinued." Do you read that?

Ambassador HELMS. Yes; I have the place.

The CHAIRMAN. That was the information supplied to the President on which he was requested to make some decisions for, among other things, authorizing the opening of the mail. That statement, "Covert coverage has been discontinued," was a lie, was it not?

Ambassador HELMS. Well, sir, you asked me this question in executive session some months ago, and I was really astounded that that should have occurred to you, and I have been thinking about this and inquiring about this passage ever since, and the only explanation I have for it was that this applied entirely to the FBI and had nothing to do with the CIA, that we never advertised to this committee or told this committee that this mail operation was going on, and there was no intention of attesting to a lie. This was broad mail coverage.

And if I signed this thing, then maybe I didn't read it carefully enough—if you want to say I should have had them change the character of the language. When this report was submitted to us, it came from a working group which had sat on these matters, and they were FBI activities that were being discussed, and I believe to this day that that is what was intended here. There was no intention to mislead or lie to the President.

The CHAIRMAN. If you had been the President of the United States and had asked for recommendations coming from a report that was signed by you, the Director of the CIA, by the Director of the FBI and the two intelligence agencies, and you read in the report that opening of mail was unlawful, and it had been discontinued, what would you believe?

Ambassador HELMS. Well, Mr. Chairman, I have to concede that on the record here, without the discussion that went on at the time, it certainly looks that way, and I'm sorry if I made a mistake at that time. If I had it to do over again, I think I would have had this language very substantially changed.

And may I say, Mr. Chairman, let us not be—well, let me draw back, but I just simply want to say that mail coverage here is a very broad term, and what we were doing was mail coverage in a very specific area, and it is not so fantastic that it might not have occurred to me that this was going to lead to these questions today. Just let me put it that way.

The CHAIRMAN. But the President was being asked to give his authority to do certain things that were acknowledged to be illegal in what has come to be known as the Huston plan, and one of the things he was asked to give his authority for was to open the mail. Yet the mail was already being opened before he was ever asked for his authority, and when he rescinded his authority 5 days later, nobody paid any attention. The mail continued to be opened.

How does a President exercise any control over the CIA or any of these agencies when he gets a memorandum of this kind and first agrees to authorizing mail openings and then rescinds the authority, and it does not matter? Either way, it continued.

Ambassador HELMS. Well, sir, you can make me look bad——

The CHAIRMAN. I am not trying to. This record makes you and everyone connected with this report look bad.

Ambassador HELMS. I just want to ask one question. Do you know that Mr. Nixon didn't know about the CIA mail-intercept operation?

The CHAIRMAN. If he did, I do not know why he went through the exercise of asking for a recommendation and then approving it and then rescinding it, and if he did, there is no one, including you, that has been able to tell us that he did.

We had Mr. Huston here. Mr. Huston said that nobody told the President that there was a mail-opening plan already going on despite the meeting at which the CIA participated. He was the President's representative charged with the responsibility of advising the Chief Executive himself.

Ambassador HELMS. On domestic intelligence. We thought we were in the foreign intelligence field.

The CHAIRMAN. However you draw these lines, it comes out bottom line that the President was given a document that did not tell him the truth.

Ambassador HELMS. Can't you ask President Nixon whether he knew or not? Or I will be guilty as charged.

The CHAIRMAN. We are trying very hard to bring Mr. Nixon to this committee to get his testimony; and if there is any way to do it, we will.

Senator Mondale?

Senator MONDALE. Mr. Helms, we have two memorandums which purport to be reports dated almost contemporaneously with conversations between the CIA and the Postmaster General, both of which state that the Postmaster General was told of mail being opened. Both have been referred to earlier today. The first is a memorandum prepared by you the 16th of February, [exhibit 10¹], reporting that you—and I gather, Mr. Dulles—had advised the then Postmaster General, Mr. Day, that you had briefed him and "withheld no relevant details." As you know, this morning we heard from Mr. Day, and he remembers nothing of that kind. How believable is this memo? What would be the circumstance that would cause you to write it? Would there be any reason to falsify in this memo? Would it be fair to say that this would be your way of trying to establish for the CIA what had happened for future purposes, and so on?

Ambassador HELMS. Yes, sir. It would have been written to tell the people that were working on this matter that we had this session, and that they were permitted to go ahead. They were aware that we were going down to consult the Postmaster General, and it seemed to me quite normal to let them know the outcome of the meeting and, since it was written, I believe, the day after the meeting, I would have thought that I would have stated quite honestly what had occurred. I can think of no conceivable motive that I could have had for changing, or trimming, or adjusting the language.

Senator MONDALE. We often hear witnesses claim that this is 14, 15 years later, that they can't remember clearly. This memo was written the day after the meeting.

Ambassador HELMS. I have to stand on what the language says.

¹ See p. 210.

Senator MONDALE. Would you not agree that this is probably a highly persuasive piece of evidence, bearing on what was discussed with the Attorney General the previous day?

Ambassador HELMS. I thought it was. It was designed to be so.

Senator MONDALE. And you still think it is?

Ambassador HELMS. As far as I know.

Senator MONDALE. Now, let's turn to the memorandum [exhibit 4¹], dated June 3, 1971. I don't know who prepared it; it is unsigned, but it does say that Mr. Helms reported on a meeting to report on the recent actions on the HTLINGUAL operation in New York. At that time, on June 2, 1971, which is the day previous to this memo, he has seen Postmaster General Blount. Blount was entirely positive regarding the operation. He had no hangups.

He was entirely positive regarding the operation. He opined that nothing needed to be done. He rejected a momentarily held thought that we should check the legality. Would you similarly agree that this memorandum, made the day following the briefing of Mr. Blount, is likely to be a very accurate description of what took place?

Ambassador HELMS. Sir, I don't know who drafted this memorandum. I want to say that at the outset, I don't know who did it. It was obviously based on a meeting that the individual attended, in which I debriefed myself about the conversation with the Postmaster General. I think I would say that the language looks to me a little bit more enthusiastic than I would have written myself, but then that is what often happens in memorandums of this kind, taken from meetings. But I would have hoped that the basic information in it was accurate.

Senator MONDALE. Once again, you would have no reason to doubt the validity of this document or to see any reason why it would be falsified?

Ambassador HELMS. Well, I can't figure out why—who would want to.

Senator MONDALE. Because both documents were not intended for public dissemination?

Ambassador HELMS. They certainly were not.

Senator MONDALE. They were private memorandums designed to place in the record a clear understanding of what had happened.

Also, wouldn't there be a reason to bring along some examples of what this mail cover and opening program had disclosed? Doesn't that make sense? If you wanted to brief a new Postmaster General, and you wanted to show him that things of value were being obtained, wouldn't it make sense for someone new to show him something tangible?

Ambassador HELMS. Yes, sir. It's like a salesman, showing you samples.

Senator MONDALE. That's right. That too would lead one to believe this description of what happened.

You mentioned earlier the mood in the forties and early fifties that led to some of these directives by the CIA designed to deal with what was then called the counterintelligence needs of the Government as perceived by its leaders. There was a sense of urgency and pressure placed upon you and the other agencies to achieve this objective. Would you not say, looking back now over these last 25 years that, in effect, you developed a new strategy, a new concept for American life

¹ See p. 197.

called counterintelligence, which tended to spill across normally restricted areas, legal channels, and departmental lines. This strategy had a tendency to develop in secret, often with very closely controlled groups being familiar with what was happening, and with many believing, as we have heard time and time again before this committee, that national security, or some other higher purpose, justified whatever was thought to be necessary in the judgment of whoever was involved—opening mail, tapping lines, breaking into doctors' files, whatever. This counterintelligence strategy sort of grew by stealth, perhaps under direct orders of the President or people under the President, but it was something that grew over the years largely unrecognized by the law, and unknown outside of these agencies. It was the sort of thing that was very difficult to try to get approval for, so it just operated and grew in this strange, extralegal way into what has now been spread out on the record before this committee over the last several weeks. Would that be an accurate summary?

Ambassador HELMS. I think that is a rather good description, sir. Could I add a couple of points to it, with your permission?

One, the concept of a secret service was brand-new to this country in World War II—and may I say, alien to it, in many respects. This country doesn't like secrecy, by and large. And when you consider that a new concept was taken and put into the Government, it is sort of almost like a foreign body. Then it had to find its way, at its own level, and its method of operating, and all of the rest of it, and having brought with it a wartime concept of how you do these things. During the war, it was to kill Germans and to do as much damage to the Germans as possible.

And it wasn't very long after President Truman got in that we discovered there was no way of getting along with the Russians, so the next thing was how do you not only settle this organization which has been taken from the OSS into the Government, but there's another interesting problem, and that is, there are a lot of Communists and Russian sympathizers in the OSS as soon as we started working against the Russians, and that had to be taken care of, and if you have some experience in this yourself, you know that's a rather delicate and difficult thing to do. And it was in those days that Mr. Hoover was very disapproving of some of the people in the CIA, and we had that problem to contend with.

Senator MONDALE. So there were many difficulties in trying to bring before the appropriate authorities, including the Congress, approval and guidelines and standards that you could be governed by in your activities. Would you say as a result of this shadowy, murky, and sometimes dirty business that was undertaken, that you were substantially handicapped by the failure to have such standards? Would you say that perhaps the important thing this committee can do, before we are done, is to put this genie back in the bottle, to define the law precisely and clearly, and to get away from any future suggestions that people can, in any level of government, act beyond the law for any reason whatsoever? Does that make sense to you?

Ambassador HELMS. I think it is a most praiseworthy aim, and exactly how you put this all together, I think, is going to be a lot more difficult than it seems on the surface.

Senator MONDALE. But now that we know, can there be any turning back? Must we not absolutely pin this down so we know exactly what is going on?

Ambassador HELMS. I don't think there is any turning back. I agree with you.

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Mondale.

Senator Goldwater.

Senator GOLDWATER. First, I just want to make a point that the documents we have been talking about, I think, are highly reliable, because they were prepared contemporaneously with the meetings before time had had the opportunity to fog memories. There was no reason not to be candid in memoranda, no indication that the mail program would be an object of congressional or other investigation.

Now, Mr. Helms, I am sorry that you didn't get to finish your dissertation about the beginnings of the CIA, because I think in that statement, you would have cleared up a lot of the doubt that seems to exist on this committee and throughout the country. Your explanation of its youth, of our having practically no intelligence prior to World War II—the fact that the CIA grew out of the ashes of the OSS, and grew very rapidly, I think, explains why a lot of the things were done in the manner in which they were done.

Had I been the President of the United States—which I tried to be, but by a very small margin I was denied that pleasure—I would have been very critical of a CIA that didn't come up with ideas of how to find the enemy, if there were an enemy in our midst. And I see no reason to suspect that the antiwar groups, anti-America groups, anti-anything groups in this country are not motivated by outside activities or by activities that are formed by our concept of government. So, while others may disagree with me, and while I will recognize the legality and illegality of certain methods of scanning mail or unopened mail, I think there comes a time when the protection of this country probably takes a very equal importance.

Now, you testified, I believe, that you talked with Attorney General Mitchell about the mail.

Ambassador HELMS. Yes, sir.

Senator GOLDWATER. I have been scanning the testimony before me that involves Mr. Mitchell, and I can't find any place in it where he recounts your discussion of mail with him. Did he tell you—is it your recollection—that he felt this was legal or illegal?

Ambassador HELMS. No, sir. And I regret he does not remember the conversation, but I understand he was a busy man. I suppose I took up some other things with him on that day, but the fact remains that I went to see him for a purpose, and I felt that I had accomplished my purpose when I left his office. And my purpose was to get his advice as to whether it was desirable to see Mr. Blount, the Postmaster General, on this mail operation.

Senator GOLDWATER. I have just been informed by Mr. Schwarz that Mr. Mitchell will be called, and I think it is most important that he be called, because a lot hinges on his memory and what he tells us, I think, can be of great value in this particular area.

The CHAIRMAN. I think it is essential, Senator, that we have Mr. Mitchell.

Senator GOLDWATER. Fine. Now, I just have a short statement to make.

I believe that Ambassador Helms has appeared at least seven times before this committee and other committees of the Congress that have and are requesting his testimony. The ambassadorship to Iran, at this time, has to rank with one of the most important diplomatic assignments an American can hold. Iran occupies an important position in the solely troubled Middle East. And I hope some way can be found to cut down on the demands for appearances by Ambassador Helms.

I think part of the problem lies in overlapping jurisdiction among the committees of the House and among the committees of the Senate, and some of the problem is just plain encroachment of jurisdiction. It seems clear that it is time for the Congress to realign its committees, so that we don't take the same testimony in many, many different ways. Officials with important responsibilities spend too much time rushing up to the Hill.

And personally, Mr. Ambassador, you have had a long record of distinguished service to this country, and I hope the Congress will let you get on with your very important work in Iran, and I hope this is the last time we see you in Washington.

Ambassador HELMS. Well, I hope I come back someday, Senator Goldwater.

Thank you, sir.

The CHAIRMAN. Senator Huddleston.

Senator HUDDLESTON. Well, I'm not ready to banish Mr. Helms to the far corners of the world.

Mr. Helms, did you know William Cotter during the period of time you served in the CIA?

Ambassador HELMS. Yes, sir. As a matter of fact, though, to be precise about this, if I knew Mr. Cotter, I had not had very many dealings with him at the time that he was recommended to go to the Post Office Department. What I did at the time was ask some recommendations from the Director of Security, and Mr. Cotter was one of the individuals whom he recommended. Prior to that time, I had not known him well.

Senator HUDDLESTON. And you merely forwarded that recommendation to Mr. Blount, who at that time was Postmaster General?

Ambassador HELMS. Yes, sir.

Senator HUDDLESTON. To fill the position of Chief Inspector of the Postal Department?

Ambassador HELMS. That is correct, sir. Mr. Blount had asked me for recommendations, and I sent them to him.

Senator HUDDLESTON. Were you aware that Mr. Cotter had some knowledge about the mail-opening project?

Ambassador HELMS. At the time I forwarded his name, I did not have that knowledge. As a matter of fact, when all of this testimony came up, I was surprised to learn this.

Senator HUDDLESTON. During the performance of Mr. Cotter's new duties as Chief Inspector, was he in touch with you personally about the mail-opening project?

Ambassador HELMS. Yes, sir. I remember one conversation with him personally, and I believe—I am not sure, but I somehow have in my memory that I got a couple of messages from him via other mem-

bers of the Agency that knew him well, that had seen him somewhere, and he passed me some kind of word or other. What this was, I don't recall clearly, but I just want to be responsive to your question.

Senator HUDDLESTON. You don't recall his expressing specific concerns to you about the propriety or the legality of this particular operation and the Post Office Department's vulnerability in relation to it?

Ambassador HELMS. No, sir. My impression of the—well, early on, I don't recall—well, early on his stewardship I don't recall what his point of view was. It was my impression that later on, he did become concerned about this transfer from the Post Office Department to the Postal Service. I am informed this afternoon—he testified this morning that he does not recall seeing me. I'm sorry; it's just my recollection.

Senator HUDDLESTON. You don't recall being curious that he brought these concerns to you, rather than taking them to the Postmaster General, who at that time was his superior?

Ambassador HELMS. No, sir, I could sympathize with his desire to have me carry that detail.

Senator HUDDLESTON. Do you find at this time, in retrospect, and also at the time this operation was ongoing, any highly desirable or necessary reason for the CIA or the FBI to enter this kind of an operation and not make the head of the Department, which you were using to accomplish your purposes, aware of what you were doing?

Ambassador HELMS. I think it is quite proper that he should know about it, Senator Huddleston. I think this is one of the problems that one has in the work that you are going to be doing in the future here, is how you outline these things and what elements of control you build into them.

Senator HUDDLESTON. We have a memorandum [exhibit 2¹] that was written early in this particular project which states that not only was the mail cover going on, but for some time the Agency had also been opening the mail and copying the contents. This memorandum stated that postal officials, of course—and this is a direct quote from the memorandum—are not aware of this, as if it were a perfunctory thing, that this type of thing would be done without advising the postal authorities and for a purpose, and I am just wondering whether or not this is part of the plan to deliberately withhold information from the Postmaster General.

Ambassador HELMS. I don't know. You remember Mr. Dulles was the Director of the Agency then. I would have interpreted the meaning, of course, slightly different than you would. I think it would have been in reference to Mr. Dulles saying, "you know this, I am just reminding you of it." Now, why it went on that way, I don't remember any more.

Senator HUDDLESTON. I would have thought maybe you would have reviewed the previous correspondence and memorandums relating to this project, because there is ample evidence that many of them had thoughts at times about the legality and propriety of it, and certainly you were aware of the flap potential, as it is sometimes called, relating to this problem. So, it would seem to me you would have been well aware that, at least until you became in charge, the

¹ See p. 187.

Postal Department had been denied the knowledge of precisely what was going on.

Ambassador HELMS. That's what the memorandum says, sir. I don't recall the precise facts myself any more, and I don't want to go against the memorandum. I'm just saying I can't be more helpful than what it says.

Senator HUDDLESTON. So, your judgment now is that it would not be proper?

Ambassador HELMS. What did Mr. Angleton have to say on the subject when he appeared before you? Didn't he draft the memorandum, or was he involved in this at the time, or was that before he got involved?

Senator HUDDLESTON. The one I was quoting was written by Mr. Angleton, on the 4th day of May 1955—1956 I believe it is—or very shortly after the program started. It seems clear to me that everybody just accepted the fact—everybody in the CIA, or at least the person to whom this memorandum was directed, accepted the fact that the Post Office Department was being denied the information on the precise nature of the operation.

Ambassador HELMS. That certainly is the way it reads.

Senator HUDDLESTON. We also have a memorandum of approximately the same time, describing some of the information that had been gathered by this opening process. An analysis of some 20 letters was prepared in which it was pointed out that of those 20 letters coming from the Soviet Union, 8 of them made some religious reference. Is this the kind of intelligence that seems to you to be desirable or valuable enough to justify a program of this nature?

Ambassador HELMS. No, sir. Senator Huddleston, this program was just getting going, and back in those days we knew practically nothing about the Soviet Union. I heard the conversation yesterday that wouldn't there be easier ways of getting such information and so forth, and all I can say is there weren't any easier ways. I don't mean to disagree with my colleague. Their memories seem to be very short because back in that time the amount of information in this Government about the Soviet Union was so small that three successive investigative commissions that were sent to examine the CIA, one under General Doolittle, one under Mr. Dulles, Mr. Allen Dulles, just before he became Deputy Director, one under Gen. Mark Clark, who were all preoccupied with pushing us harder and asking us why we weren't doing better on this, that we didn't know anything about the Soviet Union.

Now, this wouldn't justify these particular letters, justify this operation in and of themselves, but it was just beginning at that time. Frankly, all through this thing I personally was much more interested in the human aspects of it because it was in the hope that we would find some penetration or some agent or something of this kind that we were concerned more than later on getting information about crops or religion or cultural things or whatever the case may be.

Senator HUDDLESTON. I believe Mr. Osborn testified that he thought the FBI gained a great deal more helpful information out of this operation than did the CIA. Do you agree with that?

Ambassador HELMS. I heard Mr. Osborn say this. I don't know what he was basing his judgment on.

Senator HUDDLESTON. Do you have any knowledge of the kind of material that they developed?

Ambassador HELMS. I think the FBI did get useful information out of it, and I thought from time to time the Agency got useful information out of it.

Senator HUDDLESTON. I think that's all, Mr. Chairman.

The CHAIRMAN. We have a vote on the floor at the moment so I am going to declare a 10-minute recess in order that members of the committee may go over and vote.

[A brief recess was taken.]

The CHAIRMAN. The hearing will please come back to order.

Our next member in line to question is Senator Schweiker of Pennsylvania, Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Ambassador HELMS. Good afternoon, sir.

Senator SCHWEIKER. Mr. Helms, do you recall being presented in 1969 with the results of the IG's report on the counterintelligence staff in 1969, which criticized the mail-opening program?

Ambassador HELMS. Well, I can't say that today I remember the report, Senator Schweiker. I heard the statements that were made yesterday, so at least I am familiar with the content of it now, even if I don't recollect independently what else was in the report.

Senator SCHWEIKER. Have you seen the IG's report on this recently?

Ambassador HELMS. Yes, sir. There was a section of the IG's report that was shown to me.

Senator SCHWEIKER. Relating to the mail openings?

Ambassador HELMS. Yes; I think so.

Senator SCHWEIKER. Given the criticism of the Inspector General's report in this regard, why did you at that time decide to, in essence, override the recommendation of the Inspector General?

Ambassador HELMS. Sir, as best I recall it, we not only took into consideration the Inspector General's report, but I also asked to have the FBI contacted to find out their feeling about the value of this operation. I was told that they thought it was valuable and would hate to see it terminated. If that language is not there exactly, the language is a paraphrase of the fact that they would like to see it continued.

Therefore, in weighing various considerations, including, I must say, importantly, my own responsibility as Director to prevent the penetration of the Agency, that I felt that any lead we might get from this operation might be very important in that field.

So, putting these two things together, it seemed to me we had good reason to continue in terms of the quality of the operation and despite the fact that two or three of the officers who were recipients of the information in the Agency apparently did not think all that much of it.

Senator SCHWEIKER. When the program was initially set up, a number of years went by when the FBI was not even told that the operation was going on. They received no benefits from the "take," and actually had to stumble into it themselves. Is that not correct?

Ambassador HELMS. I thought they were recipients of the material from 1958 on.

Senator SCHWEIKER. When did the operation begin?

Ambassador HELMS. 1953, I think, something like that.

Senator SCHWEIKER. So, some 4 or 5 years went by when they weren't even told about it, and if they hadn't decided to do something on their own, we might either have had two separate operations to this day, or no operation.

Ambassador HELMS. Well, Senator Schweiker, has anybody brought to your attention the fact that back in those days in the fifties, there was some bad blood between Mr. Hoover and the Chief of the Postal Inspection Service and that, therefore, there was some psychological reasons, if you want to put them that way, for not bringing the FBI into it at that juncture?

Senator SCHWEIKER. I understand. But this question was in response to your saying that even though the CIA said it was low quality material—it was a testimony we have heard a number of times—one of the reasons for doing it was that the FBI thought it was great, not pointing out that for 4 or 5 years they didn't even know it was going on. So, there is a little bit of tangential argument here as to just what happened for those 4 or 5 years.

What role, Mr. Helms, do you think the Inspector General should play in situations like this? You have an Inspector General and he makes a recommendation, and he is the watchdog of the Agency. You overrule the Inspector General. What is the sense of having an Inspector General?

Ambassador HELMS. Well, sir, it is my belief that an agency of this kind or any kind needs an Inspector General. He goes out and examines what is going on, not only in the headquarters unit, but in the field, and brings back information and makes suggestions and recommendations as to what he thinks might be done to improve the service. But unless a Director wants to abrogate his authority to the Inspector General and make him Director of the Agency, I think since he is ultimately responsible, he has got to either accept or reject these recommendations. On the day that one decides that the Inspector General is more powerful than the Director, then I think it is going to be extraordinarily difficult to find any American who is going to take the job of Director.

Senator SCHWEIKER. Do you agree with some of the recommendations that are being talked about now to strengthen the Inspector General's office and to give him a larger responsibility in these very areas of possible illegal actions?

Ambassador HELMS. I think it would be desirable to strengthen the Inspector General's staff. I was surprised at figures yesterday that had been reduced in the year 1973; if I understood the testimony accurately, I think one needs a strong Inspector General. But I have seen somewhere a suggestion that the Inspector General be outside the control of the Director. I think that would be a rather unfortunate arrangement.

Would you, Senator Schweiker, take the job if there was somebody looking over your shoulder, over whom you had no control, inside your own organization?

Senator SCHWEIKER. Well, I have 12 million people outside of my own organization looking over my job.

Ambassador HELMS. That's all right. That's all right. That's different.

Senator SCHWEIKER. We have a vote on it every few years. I am not sure that is the case when you come to secret agencies. So, it seems to me you need some kind of an internal policeman. I gather from that, then, that if we did have a different IG setup, you would not favor passing—or would you favor passing—IG reports to the White House and to the oversight committees of the Congress on all occasions when such reports are made. Would you favor it?

Ambassador HELMS. Well, frankly, sir, I haven't thought that problem through, and I think any answer I gave to that would be ill-digested, and I would rather not do it, if you would excuse me.

Senator SCHWEIKER. Of course, one of our committee's responsibilities is to make suggestions like this and act on them. There has been some criticism that our committee is hurting the agencies involved. Yet, if we don't get responsible comments from members of the agencies who have been critical of actions of this committee, what dilemma does that put us in?

Ambassador HELMS. Sir, I said my answer would be ill digested. I won't decline to answer it if you insist on it.

Senator SCHWEIKER. What do you think the role of the CIA should be in terms of following the U.S. statutes of operations here in the United States? Is it your personal belief that the Agency should comply with the statutes for domestic operations and domestic work here in the United States?

Ambassador HELMS. Sir, I think that as a result of these hearings and the various inquiries that have been made by this committee and by its staff, that this dilemma should never be before a Director of the Agency in the future. I think the whole thing has got to be cleared up to the satisfaction of the Congress and the satisfaction of the White House and the satisfaction of the Director of the Agency.

I think it would be unconscionable to have future Directors feeling that they were not supported in what they were doing, that they were not operating according to well-understood guidelines. And, I can only say that from this time forth I would hope the Congress made it clear as to the kind of parameters in which a Director was going to have to function. This would be one of the guidelines that would have to be given to him, and I would like to say—and I don't want this remark to sound gratuitous—but it would be a big help to a Director to have these guidelines because nobody likes to feel—certainly I don't like to feel—that thousands of people who work with me over the years have been tarnished by the fact that they are accused of not abiding by the laws of this country; because I know a lot of these people very well, they are very loyal to this country and as patriotic as any other Americans.

Senator SCHWEIKER. It just seems to me that if the IG had a stronger role and had been given a stronger role over the last 10 or 20 years, I am not sure we would be conducting these hearings today. The intelligence community has criticized this committee for destroying this and destroying that. But I think the truth of the matter is that if we had a strong IG and if they had gotten written opinions from their General Counsel and followed those opinions, this hearing may not have been necessary. So, I think the record ought to show that some of the reasons we are having this hearing here today, and why the Congress is going through this rather unfavorable climate, is frankly because

of the lack of IG authority. So, I really think it very relevant to what we do in the future.

One of the questions I have goes back to 1954, when I believe you and Mr. Dulles briefed Postmaster General Summerfield. I am referring now to a memo [exhibit 27¹] around that period of time which was May 17, 1954. According to the memo, Mr. Summerfield was advised that a mail cover operation was underway and a mail cover operation would amount to the photographing of envelopes, backs and fronts of first-class mail. Do you recall such a memo?

Ambassador HELMS. Yes; I have it in front of me now, Senator Schweiker.

Senator SCHWEIKER. Well, this was sold to Mr. Summerfield on the basis that it was mail covers only, and it is very clearly specified here, with no doubt or indecision of the wording, that a mail cover involves photographing the fronts and the backs of the first-class mail, and not the insides. That is what you conveyed to Mr. Summerfield and allegedly a meeting of the minds took place to establish these guidelines.

Now, some time later, by 1955 at the latest, within a matter of months or at most a year, this operation completely changed its course, and went to actually opening mail and photographing the contents of mail. Did either you or Mr. Dulles ever go back and advise Mr. Summerfield that the operation he had approved and set up as a photographic operation of mail covers—backs and fronts of envelopes only—actually turned into a mail-opening photographic operation?

Ambassador HELMS. Sir, I did not go back to Mr. Summerfield. I don't know whether Mr. Dulles ever did or not.

Sir, I wanted to ask you a question about this memorandum. Is identity 46 the Solicitor of the Post Office Department?

Senator SCHWEIKER. What?

Ambassador HELMS. Identity 46—was the Solicitor of the Post Office Department present that day?

Senator SCHWEIKER. We don't have it readily available. We are trying to comply with the Agency's requirements to compartmentalize a few things and to keep our sources and methods in line, Mr. Helms.

Do you think, in terms of the future, that an exception should be added to the United States Code to allow for mail opening without a warrant for intelligence agencies under certain circumstances?

Ambassador HELMS. Well, I think if the determination is made that this is a valuable source of information, that that is the only way you can take care of this matter any longer, because certainly nobody is ever going to do it again without some sort of authority.

Senator SCHWEIKER. Do you see any practical way of implementing such a suggestion so that it does exactly what it is supposed to do without violating other people's rights? Do you see any clear demarcation?

Ambassador HELMS. I think it would be difficult to do. But, on the other hand, and I don't want to irritate anybody with this comment, but during the 20 years as operation went on, nobody ever came to me with any complaint from anybody about the condition of the letter when they received it. So, the technical job of opening it and so forth must have been a pretty good one. In addition to that, I don't recall any complaints at any time that anybody was disadvantaged by having

¹ See p. 257.

their mail opened. In other words, this was carefully controlled. The information was carefully handled. I think it was carefully evaluated, and there was a real effort made that the innocent should not be unfairly harmed.

Senator SCHWEIKER. You did have a situation arise where a Mr. Osborn came into your office, according to testimony he gave yesterday, and said he was very upset because he had seen a letter from an elected official come through the system. He went in and blew his stack or something like that. Do you remember that occasion?

Ambassador HELMS. I don't, frankly.

Senator SCHWEIKER. You don't recall that occasion?

Ambassador HELMS. That is not to say it isn't exactly as he advertised it. I don't remember his blowing his stack. But I know very well what my own policy about these matters was, and I would have been concerned about it, and wanted to change the system if this is what was coming out of it.

Senator SCHWEIKER. There is another memorandum here, and I wonder if you recall that at some point in time, I believe around 1971, special procedures were set up for VIP's, elected officials or Government officials, to insure that their mail wouldn't be put through the normal mail opening channels. They would be given some kind of special consideration, and, while they wouldn't be put on our watch list, in essence they would take their chances along with everybody else on a random basis. But, once a letter of an elected official was opened, it would be given to the Deputy Chief of Counterintelligence, and he would decide whether to dispose of it in a certain way or to disseminate it. Does this strike you? Does this have a familiar ring to you or not?

Ambassador HELMS. Well, I have familiarized myself with the papers in the last few days, sir, so it does now, when you read it to me, certainly.

Senator SCHWEIKER. Do you think it is proper for the CIA or any intelligence agency, really, to read these kinds of papers of elected public officials?

Ambassador HELMS. As a matter of fact, I don't know how this happened. I have been wondering about it myself because this would not have been a policy I subscribed to. The only thing I can figure out is maybe somebody on the watch list in the Soviet Union was getting mail from somebody, and this was just done, opened in the process. But I have not talked to any of the people who actually did the opening, and I don't know how this mistake was made, because I would regard it as a mistake.

Senator SCHWEIKER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hart.

Senator HART of Colorado. Thank you, Mr. Chairman.

Mr. Ambassador, I would like to draw your attention to exhibit 7¹. This was a memorandum for discussion between the Assistant Deputy Director for Plans and an unnamed CIA officer. I would like for you to turn your particular attention to paragraph 3, which is page 1, and I quote:

Mr. Karamessines felt that the dangers inherent in Long's subcommittee activities to the security of the Project's operations in New York should be thoroughly studied in order that a determination could be made as to whether these

¹ See p. 203.

operations should be partially or fully suspended until the subcommittee's investigations are completed.

Mr. Helms, how would you interpret that paragraph?

Ambassador HELMS. Interpret it, sir?

Senator HART of Colorado. Yes. Does that sound to you as if a congressional committee or subcommittee looking into activities of this sort might happen upon CIA mail-opening projects, and therefore it might be prudent to suspend them for the duration of the subcommittee's hearings so that anyone testifying could deny that they were going on, and then start them up again?

Ambassador HELMS. Sir, I don't know who wrote the memorandum. That is what the language says. But I don't recall who the officer was in the Agency. There is no name down here. I don't know what his standing was and I don't know what led him to make this suggestion.

Senator HART of Colorado. But you have no interpretation you could offer the committee as to how that sounds to you as former Director of the Agency?

Ambassador HELMS. I just say, I think I understand the way it sounds and what he has said there. I simply say that I don't necessarily subscribe to that as a method of approach.

Senator HART of Colorado. Do you happen to know of any other instance where the Agency adopted such a technique where the Congress or congressional committees were concerned, suspending certain operations pending possible testimony and then starting them again?

Ambassador HELMS. No, sir. I have vivid recollection of suspending a lot of operations when the Presidents and Secretaries of State were traveling.

Senator HART of Colorado. Yes; we got into that also. In this connection, if there were a standing congressional oversight committee of some kind, how could we, in your judgment, best protect ourselves against that kind of technique or tactic?

Ambassador HELMS. I think, Senator Hart, that over the years those Senators and Congressmen who have been on the oversight committees have found the Directors of the agencies have been not only forthcoming with them, but candid and honest with them. I have never heard any Senator or Congressman allege anything to the contrary.

The fact that there hasn't been more communication between the Agency and the oversight committees is a matter of history. I think it is inappropriate to get into maybe some of the reasons and so forth. They have been alluded to by various members here. But I do know that under Mr. Dulles, Mr. McCone, certainly, and certainly under me, I never lied to a congressional committee in my life as far as I am aware.

I just want to make one other comment, not anticipating the next question, but I just want to say also this is not one of those questions where if I had the opportunity I would like to be forthcoming. It has been very lonely, if I might say, at various times.

Senator HART of Colorado. In that connection, parenthetically, I think many of us feel that where abuses have occurred, Congress also shares some of the responsibility for not carrying out its functions.

But the point is that regardless of the past, if we try to correct it, how do we prevent a situation from arising where someone, such as

yourself, wants to tell the truth, does not want to deceive the Congress, and therefore a project that might draw the ire of the Congress is merely suspended pending discussions with the oversight committee?

Ambassador HELMS. Sir, I regard this as an unfortunate sentence. As I say, I don't know who wrote it, and I don't believe that any senior officer of the Agency would have gone along with this kind of a delusion.

Senator HART of Colorado. As a tactic, you deplore it.

Ambassador HELMS. I do deplore it.

I would like to say something further, that I think that since you have raised this question, that when you do get down to the point of oversight of matters of this kind, I think that it ought to, in the climate, ought to be put to a test. I think Senators and Congressmen ought to see whether they are getting the kind of information they need from the Agency before they legislate it, because I think it would be a lot easier to get it handed over to you, than to say you've got to talk about this and this and this, and then something brand-new comes up that isn't covered by this and this and this, and then they say, "well, you know, we've got no responsibility for doing that." So I think it would be far better to give it a chance and see what happens.

Senator HART of Colorado. Mr. Ambassador, if you would turn to exhibit 12¹, which is a letter from you to the FBI Director Hoover, dated March 20, 1970, I would like to call your attention to page 5, paragraph 3, most of which is blacked out, but the extant paragraph—

Ambassador HELMS. Is it the thing headed "mail coverage?"

Senator HART of Colorado. Yes; that paragraph. In that discussion between yourself and Mr. Hoover, you were discussing the New Left and racial matters.

Ambassador HELMS. Yes; I've got that, sir.

Senator HART of Colorado. In that discussion, you stated: "The increasingly close connection between these forces in the United States and hostile elements abroad has been well established by both of our agencies."

This is a claim that we have discussed since your last appearance with representatives of the various agencies, and it has become fairly crucial to our findings and conclusions to determine just what that link was. What information can you offer us to substantiate that—I think what you call "well established link between the New Left and racial groups in this country and elements abroad, hostile elements abroad?"

Ambassador HELMS. Well, I remember a couple of examples. I'm sure the Agency must be able to produce others, but I remember the Algerians were training guerrillas in Algeria that were U.S. citizens. I also recall that a group of Mexican terrorists were sent all the way to North Korea for training and then returned to Mexico to work not only there, but in the United States. There was evidence of this kind to which I was alluding.

Senator HART of Colorado. There was a link between those agents from Mexico and elements or groups in this country?

Ambassador HELMS. Yes; that is my recollection anyway, sir, but I do think that—can't either the Agency or the FBI come up with more specifics?

¹ See p. 219.

Senator HART of Colorado. No. There are a lot of vague allegations, but not too many specifics.

Ambassador HELMS. I see.

Senator HART of Colorado. One further reference to a memorandum [exhibit 13¹] dated February 1, 1962, from the Deputy Director of Counterintelligence to the Director of Security. That memorandum in paragraph 3 states in part that everyone realized from the outset of the mail project that: "a 'flap' would put us"—that is to say the project—"out of business immediately and may give rise to grave charges of criminal misuse of the mails by Government agencies."

The memo goes on to say that it had been decided that "the effort was worth the risk." And then the memorandum says, "It should be relatively easy to hush up the entire affair" or "to find a scapegoat to blame for unauthorized tampering with the mails."

This memo shows the thought process that we have been dealing with here today. Would you agree with the general assessments and conclusion of that portion of this memorandum?

Ambassador HELMS. I have read the memorandum, Senator Hart, and I don't feel that this is a—well, it is a good piece of thinking at all, as a matter of fact. I don't recall ever having seen the memorandum at the time that I was in office, but I certainly have read it since, and I don't understand even what he is referring to in the last part of the memorandum. All this business about hushing it up. I don't quite understand what he had in mind.

Senator HART of Colorado. Well, presumably, if somebody stepped forward and said, "my mail did not reach me in time," and it was part of a project that was recently uncovered, the Agency could blame it on somebody at the Post Office or someone else. It looked as if they were trying to lay contingency plans.

Ambassador HELMS. In any event I think it is a poor piece of thinking. I don't think it would have been satisfactory under any circumstances.

Senator HART of Colorado. Had you seen it as Director, you would have—

Ambassador HELMS. I certainly wouldn't have agreed with it.

Senator HART of Colorado. Mr. Chairman, one other question, if I may.

At exhibit 1,² which is a 1960 IG report, on page 4, a continuation of paragraph 6, we find the following:

Of the total items opened, about one-third are on the watch list and the others are selected at random. Over the years, however, the interceptors have developed a sixth sense or intuition, and many of the names on the watch list were placed there as a result of interest created by the random openings.

How does one develop the sixth sense or intuition to pick letters out of the mailbag and open them?

Ambassador HELMS. That's a good question, I don't know.

Senator HART of Colorado. There is no particular training for that?

Ambassador HELMS. I wouldn't have thought so. I realize what sixth sense means, but I don't think I would put that in an IG report, if I had been writing it.

Senator HART of Colorado. More importantly, would you have adopted it as a policy?

¹ See p. 222.

² See p. 175.

Ambassador HELMS. They might have learned by experience how to do their job better. They might have developed an ability to do it a little more rapidly, but that they would know by looking at it, extra-sensory perception, if you might, that they knew what was in the envelopes. I don't believe it.

Senator HART of Colorado. If you take two-thirds of the total number of envelopes opened, that is a pretty big dragnet. It does not take a whole lot of sixth sense.

Ambassador HELMS. I can't subscribe to that, Senator.

Senator HART of Colorado. Thank you.

The CHAIRMAN. Thank you, Senator Hart.

I am told that Senator Mathias was inducted into an Oklahoma Indian tribe today, which has accounted for his late arrival, but I am happy to say he has arrived, and Senator, if you have any questions you would like to ask at this time, please do so.

Senator MATHIAS. Mr. Chairman, I might just say that for the record my new name is Istomingo among the Chickasaws.

The CHAIRMAN. Senator Istomingo.

Ambassador HELMS. Was there a blood rite, Senator Mathias?

Senator MATHIAS. No, but we went far enough. You will be glad to know that I did not have to wear the war bonnet because of the new act of Congress which forbids the slaughter of the American bald eagle, which makes it very difficult to obtain war bonnets any more, so I could not pose, as Calvin Coolidge did, in the full regalia of my office.

Ambassador Helms, we are delighted to have you back again, and I suspect that this committee combined with your distant post in Teheran is probably the greatest act of assistance to the airlines since we began shipping the mail.

Ambassador HELMS. Did you notice that Pan Am has been doing much better in the last quarter?

[General laughter.]

Senator MATHIAS. I can understand that. I think since we developed a mail contract, this is probably the best thing that has happened for them.

A little earlier today, you mentioned the fact that all of this began at the time when Allen Dulles was Director and that you had an understanding that he had made his peace with the law, I think is the phrase you used. I wonder if you could expand on that?

Ambassador HELMS. I really don't think I can expand on that very much.

Senator MATHIAS. Well, first of all, I think it may be important for us to know, did you think he had made his peace with the law?

Ambassador HELMS. Yes; I thought he had.

Senator MATHIAS. And not as a personal matter, but on behalf of the Agency?

Ambassador HELMS. Yes, sir; because he was a much respected figure, and he was certainly much respected by me, and he had wide experience after World War I, between the wars, and during World War II, and it just would not have occurred to me to fault him on a matter of law.

I was a lot younger, I suppose, but in any event when I made that comment earlier today, that was my way of saying I thought that he

had made his peace with this, and he had checked it out with whatever people were necessary to check it out with.

Senator MATHIAS. And there was no machinery within the Agency for a review of a question of that kind, once it had been settled, or once a determination had been made?

Ambassador HELMS. If I understand your question, I think the answer is no. The Agency Directors over the years have, you know, been in a sense the last port of authority, and when they made a decision, that was that, and so it was seldom that anybody would have called into existence a formal review to review the Director's decision.

Senator MATHIAS. And you had been in the Agency a number of years, and you had seen a number of Directors come and go. Was there any regular review, at the time of the changing of the guard, of questions of this sort?

Ambassador HELMS. Well, there probably should have been, but new Directors would get themselves—

Senator MATHIAS. The answer is no?

Ambassador HELMS. Yes; all right.

Senator MATHIAS. All right.

Well now, you mentioned in the time frame of 1954 and 1955 three commissions that looked into the CIA?

Ambassador HELMS. Sir, I am sorry. May I say that if I put them in a specific time frame, I didn't mean to. I don't remember when those commissions were actually functioning, but they certainly were functioning after the CIA had been set up.

Senator MATHIAS. Well, would you say some time in the decade of the fifties?

Ambassador HELMS. Yes; between 1947 and 1957.

Senator MATHIAS. All right, and this would have covered the period in which the mail program began?

Ambassador HELMS. I think so.

Senator MATHIAS. And if I understand your previous testimony, it was that the burden of their report was to increase the pressure on CIA to increase its product from the Soviet Union.

Ambassador HELMS. Sir, the intention of these commissions was, "why isn't this organization getting on with the job faster and better than it has been?" and the entire thrust of their recommendations and so forth was to try and get the job done better, and I don't recall any particular preoccupation with the obstruction inhibition, nor do I recall any particular concern with the legality or lack of legality of a certain kind of operation.

Senator MATHIAS. Let me ask counsel if we have the membership of those commissions in our record.

Mr. SCHWARZ. We do with respect to one commission. The Doolittle Commission was General Doolittle, Mr. Hadley from New York, and another lawyer from New York. I am sure we do.

Senator MATHIAS. Mr. Chairman, I would like to request that the membership of those commissions be inserted in the record at this point, without taking the committee's time, because I think it is important.

The CHAIRMAN. Without objection, that will be done.

The following members of the Doolittle Committee were appointed by President Eisenhower in July 1954 to evaluate the administration and functioning of the Central Intelligence Agency :

General James Doolittle
 William B. Franke
 Morris Hadley
 William Pawley

As a sub-unit of the Hoover Commission's evaluation of United States government agencies' operations, in 1954 the Clark Task Force reviewed the functioning of the intelligence community, including the CIA. It had the following members:

General Mark W. Clark
 Admiral Richard L. Conolly
 Donald L. Russell
 Captain Edward V. Rickenbacker
 C. F. Hollins
 Henry Kearns

Senator MATHIAS. Were you in the Agency at this time?

Ambassador HELMS. Yes, sir. I joined the Central Intelligence Agency in 1947 when it opened for the first time.

Senator MATHIAS. Did you receive the report of the Commission?

Ambassador HELMS. Yes, sir, at the time.

Senator MATHIAS. Of these commissions, I should say.

Ambassador HELMS. Yes. I don't recall the differentiations between them, or among them rather, to use proper English, but I did see them.

Senator MATHIAS. Was the question of legality raised by any of these commissions?

Ambassador HELMS. Not to my recollection.

Senator MATHIAS. Do you think you would have remembered if it had?

Ambassador HELMS. I think if somebody had said, "that is wrong, don't do it," I think I would have remembered it.

Senator MATHIAS. I asked the chairman to have these lists included in the record because I think we have to see this in the framework in which the people saw it at that moment.

Ambassador HELMS. Yes, sir.

Senator MATHIAS. And they may have seen it incorrectly, and it may be our job to try to set it at a different framework, but nonetheless, we cannot change the framework which then existed.

Ambassador HELMS. No, sir.

Senator MATHIAS. Now, is it true that the FBI and its Director, Mr. Hoover, gave to the CIA certain names and certain categories for examination of mail?

Ambassador HELMS. Yes, sir. As a matter of fact, I just have seen in the papers that the last memorandum of that kind from Mr. Hoover to the Agency was sent in March, 2 months before he died actually, and that we had had these memorandums over a period of years with names and categories of information that they wanted.

I believe that Mr. Papich, who I am sure has testified before this committee, was very familiar with this because he was liaison officer of the FBI for the Agency for such a long time. I believe the name of the man who had most to do with the use of it and evaluation in the FBI was a man named Donald Stewart. I don't know whether he's still there or not.

Senator MATHIAS. But you say the last one was dated a few months before Mr. Hoover's death, so that is considerably after their 1966 renunciation of this kind of practice?

Ambassador HELMS. Yes, sir. I think he died in 1972, didn't he?

Senator MATHIAS. So that although they had renounced the practice in 1966, they were asking you, in effect, to do the dirty work for another 5 or 6 years thereafter?

Ambassador HELMS. That is correct, sir.

Senator MATHIAS. Now the FBI is a branch of the Department of Justice. At the time these requests were made, was there ever any discussion of the legality or illegality of what they were asking for?

Ambassador HELMS. Not that I recall, Senator Mathias. I was as close to Mr. Hoover as the telephone and not any closer.

Senator MATHIAS. Although he had protested some aspects of the Huston plan, did he raise any question about illegality of mail cover during the discussion that you had collectively with the group of those who were involved?

Ambassador HELMS. Isn't there some language in the Huston report about this? I believe the chairman was calling this to my attention earlier in the hearing, and this was written down, in other words in the report.

In answer to your question, I don't recall any conversation with Mr. Hoover about it.

Senator MATHIAS. That was really what I was asking. Yes; we have the notes which are available. I was just wondering if you had any independent recollection to supplement that. What is the date of that memorandum [exhibit 11¹]?

Mr. SCHWARZ. June of 1970.

Senator MATHIAS. June 1970, but yet you were still getting requests from Mr. Hoover until 1972 notwithstanding the renunciation of the program in 1966 by the FBI and Mr. Hoover's personal rejection of it as part of the Huston plan?

Ambassador HELMS. That is correct, sir.

Senator MATHIAS. This seems to me a very interesting kind of sequence of events.

One final question: Did you ever solicit these chores from the FBI or were they self-starting?

Ambassador HELMS. Oh, I think they were both ways, but you will recall, Senator Mathias, that the FBI had a liaison section, and they had officers assigned to the various agencies with whom they did business, and this man was going back and forth several times a day, every day, so it is terribly hard to say which was the chicken and which was the egg. I think it went both ways.

Senator MATHIAS. Sometimes, the existence of the facility invites the use of it, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator—what was your name again?

Senator MATHIAS. Istomingo.

The CHAIRMAN. Our chief counsel, Mr. Schwarz, has one or two completing questions, and I have a final question, and that should finish it for the day.

Mr. Schwarz, go ahead please.

Mr. SCHWARZ. Could you turn to exhibit 7²? I have a question, to straighten out something that is unresolved.

Ambassador HELMS. I have it, sir.

¹ See p. 211.

² See p. 203.

Mr. SCHWARZ. In paragraph 7, a suggestion was made that if the Agency was not going to talk to Mr. Gronouski, it might be that the information about their programs should be passed through Mr. McGeorge Bundy to the President after the subcommittee had completed its investigation. Was information about the mail-opening plan given to Mr. McGeorge Bundy?

Ambassador HELMS. I don't recall ever having done so. No, sir.

Mr. SCHWARZ. The second of three final questions: As a historical note on what Senator Mathias said, am I correct in the impression I have gathered from the documents that you and Mr. Hoover always referred to each other as Mr. Helms and Mr. Hoover, but never got beyond the "mister" in all the time you worked together?

Ambassador HELMS. That is correct, sir. And if I may make one further sentence, there weren't very many people in town that called him Edgar.

Mr. SCHWARZ. Finally, we have provided you with a document exhibit 14¹ dated July 28, 1970, referring to a meeting you had with Mr. Mitchell the day before. It was given to you, a one-page document. Have you got it?

Ambassador HELMS. Yes.

Mr. SCHWARZ. That document reflects a meeting you had with Mr. Mitchell about the Huston plan after the President's approval thereof came to the Agency. Is that right?

Ambassador HELMS. Yes.

Mr. SCHWARZ. Now, in that meeting, what were you told by Mr. Mitchell about the Huston plan? Did he tell you he knew about it or he didn't know about it?

Ambassador HELMS. Well, my recollection and what the memorandum says, which is what I would really prefer to stick to, is that I apparently mentioned this to him and he said that he had not heard anything about it, and that he wanted to look into it.

Mr. SCHWARZ. All right.

Ambassador HELMS. The thing that surprised me, and this I do recall, was that he hadn't been present at the original meeting with the President, but I felt that somebody had obviously been in touch with him about the contents of that meeting, so I was surprised he knew nothing about the project.

Mr. SCHWARZ. In this memorandum, you give a characterization of what kind of effort the CIA had put into the document which was produced in June, which advocated all of those illegal actions, admittedly illegal actions. And I will read into the record what you said you told the Attorney General and then will ask you if that is a fair characterization of the effort the CIA made to support the document which called for many kinds of illegal actions in connection with domestic activities.

You said, "I told the Attorney General that we had put our backs into this exercise." And then you go on to say, "because we thought he knew all about it and was behind it." But is it fair? Is it accurate? Did you tell the truth in that memo when you said the CIA had put its backs into the exercise?

Ambassador HELMS. The point I was trying to make to him was that Mr. Angleton, Mr. Ober, and some others had practically

¹ See p. 224.

dropped everything they were doing to cooperate with this task force to write the report.

That is what I meant in putting our back into it. I didn't mean that intellectually we had contributed a whole lot of illegal ideas, or anything of that kind.

Mr. SCHWARZ. You did put your backs into the writing of something. But you didn't advocate a whole lot of illegal actions?

Ambassador HELMS. We put our backs into meetings which led to the report.

Mr. SCHWARZ. You put your backs into the exercise which led to the writing of the report which advocated all kinds of illegal activity?

Ambassador HELMS. Yes, sir, we put our back into an exercise that had been ordered by the President of the United States.

Mr. SCHWARZ. And what you recommend is the institution or re-institution of all kinds of illegal activity? Is that not right?

Ambassador HELMS. That is your characterization.

Mr. SCHWARZ. Well, all right. The document speaks for itself, and we all know what it says.

The CHAIRMAN. Mr. Helms, during the period that you were Director of the Agency, did you ever tell the congressional oversight committees about the mail-opening program?

Ambassador HELMS. I don't recall ever having discussed this with the congressional oversight committee; no, Mr. Chairman. In fact, I don't really remember the subject ever coming up in any hearings.

The CHAIRMAN. It is not likely that the subject would ever come up if they had no reason to believe that such a thing was going on. I remember one time in the Foreign Relations Committee questioning Secretary MacNamara, and we wondered why he hadn't told us something that we thought was rather vital, and his response was, "well, because you never asked." And since we had no knowledge of it, we had no reason to ask.

What I am trying to say is this: if this committee, at the end of its proceedings, were to decide that a joint congressional committee of some kind should be established with proper powers and proper jurisdiction, and given the duty to exercise a meaningful surveillance of intelligence operations, wouldn't it be necessary to impose an affirmative meaning on the agencies as a matter of law to keep such a committee fully apprised of all significant covert operations?

Ambassador HELMS. Mr. Chairman, I say yes. And I add one further thing and that is that there are two sides to every coin and it takes two hands to clap, and the committee has got to make itself available for enough time to get all of these things set.

The CHAIRMAN. Yes; with that, I agree. And I think that if Congress is to play its role in the future to make certain that our intelligence operations are not only lawful but that they are given as much strength and public confidence as possible, then a committee needs to be established that will devote sufficient time to the work. And it can't be simply an adjunct of some other committee that has a very large responsibility in some other field, as the Armed Services Committee, 95 percent of which is devoted to the armed services and not to the special problems connected with intelligence.

Ambassador HELMS. I certainly agree, Mr. Chairman, wholeheartedly.

And I do think that every Director does need guidance from the Congress. And it needs more than they have had in the past.

The CHAIRMAN. Thank you very much for your testimony, Mr. Helms.

Ambassador HELMS. Thank you, Mr. Chairman.

The CHAIRMAN. That will conclude this hearing.

The committee will reconvene at 10 o'clock on Friday morning in this room when the FBI's part in this mail opening will be examined and when, hopefully, we will hear from former Attorney General John Mitchell.

[Whereupon, at 4:33 p.m., the committee was recessed to reconvene at 10 a.m., Friday, October 24, 1975.]

FRIDAY, OCTOBER 24, 1975

**U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C.**

The committee met, pursuant to notice, at 10:08 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Mondale, Huddleston, Hart of Colorado, Baker, Mathias, and Schweiker.

Also present: William G. Miller, staff director; Frederick A. O. Schwarz, Jr., chief counsel; Curtis R. Smothers, counsel to the minority; and Charles Kirbow, professional staff member.

The **CHAIRMAN**. The hearing will please come to order.

Our first witness this morning is former Attorney General John Mitchell. Mr. Mitchell, will you please stand and take the oath. Do you solemnly swear that all of the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MITCHELL. I do, Mr. Chairman.

The **CHAIRMAN**. Mr. Schwarz will commence the questioning.

**TESTIMONY OF JOHN MITCHELL, FORMER ATTORNEY GENERAL,
ACCOMPANIED BY WILLIAM G. HUNDLEY, COUNSEL**

Mr. SCHWARZ. Mr. Mitchell, are you accompanied by counsel?

Mr. MITCHELL. Yes; I have Mr. William Hundley with me.

Mr. SCHWARZ. Have you had your attention called to the testimony the other day of Mr. Helms on the subject of the CIA's mail opening program and his testimony about a meeting with you?

Mr. MITCHELL. I saw this morning two pages that had reference to it, yes, sir.

Mr. SCHWARZ. All right. Have you had an opportunity to check your office calendar to determine whether you did meet with Mr. Helms in June of 1971?

Mr. MITCHELL. As I previously told this committee, my log shows a meeting of 22 minutes with Mr. Helms on June 1, 1971.

Mr. SCHWARZ. All right. What is your best recollection of what transpired in that meeting?

Mr. MITCHELL. Mr. Helms came in to see me, I believe, primarily about another subject matter, and during the discussions of that subject matter Mr. Helms referred to the activities of the CIA in connection with the U.S. mails. My understanding of it was that he had reference to mail covers. It was a very short conversation on the subject matter, according to my recollection, and that is about the substance of what I can recall at this late date.

Mr. SCHWARZ. When you say mail covers, what do you mean by mail covers?

Mr. MITCHELL. Well, there is a practice of law enforcement agencies to obtain information to look at mail in envelopes going between parties in which law enforcement agencies have an interest to find out who is the sender, if possible, and, of course, who is the recipient of the mail.

Mr. SCHWARZ. You said this practice involves looking at mail in envelopes, and by that do you mean looking at the contents of the letter?

Mr. MITCHELL. No. It does not. Mail cover, as the term is used, and as I understand it, does not entail the opening of the envelopes.

Mr. SCHWARZ. Did Mr. Helms in that conversation tell you that the CIA had been and was opening mail?

Mr. MITCHELL. I have no recollection of any such discussion at that time or any other time with Mr. Helms.

Mr. SCHWARZ. Is it your testimony, then, that you believe he did not tell you the CIA was opening mail?

Mr. MITCHELL. It is my testimony that the best recollection I have of the meeting with Mr. Helms on June 1, 1971, was that I understood what he was talking about was a mail cover operation, that is correct.

Mr. SCHWARZ. Did the subject of legality arise in your conversation with Mr. Helms?

Mr. MITCHELL. I have no recollection of it whatsoever. I would not believe it would arise in connection with a mail cover which, as I said before, is used by most law enforcement agencies in the proper circumstances, and I do not believe that the question of legality would arise during such a conversation.

Mr. SCHWARZ. If it was all such a routine matter, why then is it your understanding that Mr. Helms came to see you?

Mr. MITCHELL. About another subject matter.

Mr. SCHWARZ. Why did he mention, to the best of your understanding and your testimony, the subject of mail at all?

Mr. MITCHELL. Because of the fact that it related to the other subject matter in an indirect, peripheral way, as I recall the other subject matter that we discussed.

Mr. SCHWARZ. And by that, are you saying that the other subject matter related to the gathering of intelligence, and he then informed you that one method of gathering intelligence was mail covers?

Mr. MITCHELL. Well, I agree with everything up to the last aspect of it. He put it more in the context that it was not unsimilar with the primary subject matter of our discussion.

Mr. SCHWARZ. What was the primary subject matter of your discussion?

Mr. MITCHELL. I do not believe that I am permitted to testify on that subject matter here at this time.

Mr. SCHWARZ. Mr. Chairman, I don't know the appropriate procedure on that. Mr. Mitchell, what is the basis for that statement?

Senator BAKER. Before you go on, Mr. Schwarz, is this the same matter that was covered in the executive session when Senator Tower was present?

Mr. SCHWARZ. I assume that it is, and I think we should get on the record here the nature of Mr. Helms' reasoning, and then the committee can rule—excuse me, Mr. Mitchell's reasoning.

Mr. MITCHELL. You mean Mr. Helms' reasoning?

Mr. SCHWARZ. I mean Mr. Mitchell's reasoning.

Senator BAKER. Before you go on, as you understand it, this is going to deal generally with material that Senator Tower ruled on in the executive session?

Mr. SCHWARZ. I would assume so, Senator Baker.

Senator BAKER. All right. Thank you.

The CHAIRMAN. Mr. Mitchell, can you state the basis for declining to reveal to the committee what the principal subject of conversation was that day between you and Mr. Helms?

Mr. MITCHELL. I do not believe, so far as I know, that the subject matter has been in the public domain, and I don't believe that I should be the one to disclose it here. I understand that your committee and the executive branch is having certain discussions on hearings in some areas, and it may very well be that this would fall within it.

The CHAIRMAN. And are you referring now to the same subject matter that you referred to in the course of the deposition that was taken of you earlier when this general question arose and you took the same position then that you are taking now?

Mr. MITCHELL. Yes, Mr. Chairman, except that I would like to point out that it wasn't discussed during the taking of my deposition. It was discussed with the vice chairman of your committee on his representation that you had an understanding with the executive branch that when such matter arose, that either you or he or both of you might inquire into the subject.

The CHAIRMAN. Very well. I believe that we have identified the subject sufficiently well so that I understand the reason for your declining to respond to that particular question.

The subject does not really relate to the question of mail opening that we are now asking you about. Is that correct?

Mr. MITCHELL. That is correct, Mr. Chairman. But you can see that there was a collateral circumstance there under which the mail cover aspect might have arisen.

The CHAIRMAN. Yes. Very well, Mr. Mitchell.

Counsel, I wouldn't pursue that any further.

Mr. SCHWARZ. In any event, Mr. Mitchell, your testimony about that meeting is that you discussed mail cover and not mail opening. Is that correct?

Mr. MITCHELL. That was my understanding of the basis of the short discussion we had on the subject matter.

Mr. SCHWARZ. Now, one final question. First, did Mr. Angleton of the CIA show you material obtained from CIA opening of mail, and second, did he show you material relating to a Cathy Boudin?

Mr. MITCHELL. To the best of my recollection I have never met Mr. Angleton in my life. I may have in some group or circumstances. I have no recollection. I feel quite certain that Mr. Angleton never showed me anything relating to Cathy Boudin, and certainly not under the circumstances that it was a product of a mail opening.

Mr. SCHWARZ. Did any other person in the CIA show you material relating to Cathy Boudin?

Mr. MITCHELL. I have no recollection of it. I am quite sure they would not.

Mr. SCHWARZ. I have nothing further, Mr. Chairman.

The CHAIRMAN. Do you have any questions, Mr. Kirbow?

Mr. KIRBOW. I have no questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. Mitchell, you are acquainted, are you not, with what has come to be known as the Huston plan?

Mr. MITCHELL. Generally, Mr. Chairman, yes. It has been a long time since I examined it, but I understand the subject matter.

The CHAIRMAN. Is it true that you were not involved in any way in the meetings between the various intelligence agencies which led up to the submission of the Huston plan?

Mr. MITCHELL. That is true, sir. Yes, sir.

The CHAIRMAN. Is it also true you knew nothing about these meetings or the Huston plan until after it had been submitted to President Nixon?

Mr. MITCHELL. That is correct.

The CHAIRMAN. Who first told you about the existence of such a plan?

Mr. MITCHELL. I believe it was Director Hoover, but it could have been Mr. De Loach, one of his associates.

The CHAIRMAN. Did you subsequently meet with Mr. Hoover to talk about the plan?

Mr. MITCHELL. I believe I met with Mr. Hoover to talk about the plan. It again could have been Mr. De Loach who brought the plan to me at Mr. Hoover's direction.

The CHAIRMAN. Did you ever speak to Mr. Helms about the plan once you had learned of it?

Mr. MITCHELL. I do not have a recollection of talking to Mr. Helms about the plan, although I have been shown memorandums where Mr. Helms says that such a meeting and discussion took place.

The CHAIRMAN. Well, when you talked either to Mr. Hoover or to his deputy, Mr. De Loach, do you have any recollection that either of them told you that mail was being opened?

Mr. MITCHELL. Well, no, not that mail was being opened. The discussion I had with them was to go over the salient point of the recommendation of the so-called Huston plan. The plan, of course, contained a recommendation with respect to that, and I believe, based on some homework that I have done here recently, that the materials had a reference to the fact that there was no covert operation, which I understand in that document meant the opening of mail. There was a reference to mail covers; in other words, the examination of the outside of envelopes.

The CHAIRMAN. Well, the Huston plan did contain, as you correctly say, the statement that mail openings had been terminated, and it included a request that the President authorize mail openings.

Now, my question is, after you learned of the plan, do you recall being told that mail openings were then going on, even though the plan itself stipulated that they had been terminated?

Mr. MITCHELL. No, sir. To the best of my recollection I was never told anyone was carrying on a mail opening operation.

The CHAIRMAN. Now, as Attorney General of the United States and the chief law enforcement officer of the Government at the time, doesn't it strike you as being extraordinary that you should not have been told about a mail-opening program that was contrary to the laws of the country?

Mr. MITCHELL. Well, I would believe, Mr. Chairman, that that would depend entirely upon what had become the established practice with the CIA, or whatever other agency was opening mail, vis-a-vis the executive branch of the Government, particularly the Attorneys General. It would surprise me only to the extent that they did not brief me on such a subject matter as they did on many other types of intelligence-gathering operations that were in place when I became Attorney General.

The CHAIRMAN. Although they briefed you on other intelligence operations, according to your testimony, they never briefed you on the mail opening?

Mr. MITCHELL. Not on the mail openings; no, sir.

The CHAIRMAN. When you learned of the Huston plan, what action did you take? You proceeded, did you not, to take the matter up with the White House? Did you take it up directly with the President? Did you take it up with someone else in the White House?

Mr. MITCHELL. As I testified this morning, Mr. Chairman, I made known to the President my disagreement with the concept of the plan and recommended that it be turned down. Whether that was in a direct conversation with the President, which I believe it was, but it could have been in a conversation that I might have had with Mr. Haldeman that was transmitted to the President.

The CHAIRMAN. What were your reasons for recommending that the plan be turned down?

Mr. MITCHELL. The proposals contained in the plan *in toto* were inimical to the best interests of the country and certainly should not be something that the President of the United States should be approving.

The CHAIRMAN. Do you mean by that that the proposals for undertaking illegal action formed the basis for your objection to the plan?

Mr. MITCHELL. That is correct, sir. There had been, of course, individual items of that plan suggested to me that would be undertaken by parts of the Justice Department, which had been turned down, and the aggregate was worse than the individual parts that had been suggested.

The CHAIRMAN. Was it your understanding, following your conversations at the White House, that President Nixon then rescinded his approval of the plan?

Mr. MITCHELL. I was so told.

The CHAIRMAN. By whom?

Mr. MITCHELL. I believe either the President himself or Mr. Haldeman, I am not certain which.

The CHAIRMAN. At any time afterwards, were you ever told that the mail openings continued, despite the President's rescission of his earlier approval of the plan?

Mr. MITCHELL. No, sir, as I have previously testified.

The CHAIRMAN. Given the fact that, as Attorney General, you were not told in the first place of the meetings between the various intelligence agencies and the FBI, which was directly under your jurisdiction, and which led to the formulation of the plan, and in view of the fact that the plan itself contained recommendations that were illegal, and you were not informed of the plan until after it had been submitted to the President, and in view of the fact that you then asked

the President to rescind his approval of the plan, why didn't you follow up afterwards to make certain that none of these practices were, in fact, going on? Did you just accept the statement that the matter had been reconsidered and the President's approval had been withdrawn and take no further action?

Mr. MITCHELL. Mr. Chairman, when the President of the United States makes known his determinations with respect to a subject matter, one would believe that the branches of the executive departments underneath him would follow through on his determinations, and needless to say, some of the agencies that were involved in the preparation of the Huston plan, such as the CIA, were not under my jurisdiction.

I know that from time to time I had further discussions with Director Hoover on some of the subjects contained in the Huston plan and the Bureau continued to abide by the determinations of the President.

The CHAIRMAN. And beyond that, you felt that the other agencies who had signed the plan were really beyond the jurisdiction of the Justice Department, so that your followup was confined to the FBI—is that your testimony?

Mr. MITCHELL. That is the substance of it; yes, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator BAKER. Mr. Chairman, thank you very much.

I think counsel and the chairman have covered the matters that you were invited to testify about, Mr. Mitchell. I have one or two brief questions on a tangential or related matter.

As you testified, the situation was such that you were not advised that the Huston plan was being formulated; in fact, on the first opportunity, you recommended to the President that it be disapproved, and it was disapproved or withdrawn. What would you suggest, as a former Attorney General of the United States, to make sure that the Attorneys General in the future have a better understanding of what sort of plans are being proposed to your successors or to future Presidents? Do you think there is some way we can guard against this sort of thing happening in the future?

Mr. MITCHELL. Well, apropos of these answers I gave to the chairman in that area, I believe that so far as the executive branch is structured now, the Attorney General's responsibility rests with the Federal Bureau of Investigation, and the other constituent parts of the Justice Department. With respect to that, I am fully convinced, after many experiences, that the only way the Attorney General will ever get control of the Federal Bureau of Investigation is through the Director. There is no way that an Attorney General can carry on all of the functions that he has to do, with all of his divisions, with all of his bureaus, and be able to monitor what goes on in the FBI.

Senator BAKER. How is one to ensure that? How is one to ensure that future Attorneys General have control of the Director of the FBI?

Mr. MITCHELL. How are you going to ensure it?

Senator BAKER. Yes.

Mr. MITCHELL. Only by the appointment of the proper Director; that's the only way.

Senator BAKER. Would it be helpful to appoint a Director for a term of years?

Mr. MITCHELL. Yes. I think that, Senator, we can go to the same concept that I understand you and I hold about the Presidency, that if you had a long enough term and a single term, I think that would be one way of perhaps putting some rein on it.

Senator BAKER. You mentioned that the scope of your jurisdiction and concern extended only to the FBI and not to the CIA, as it was related to the Huston plan. Do you think that is a defect? Do you think that in terms of the total intelligence apparatus of the U.S. Government that there ought to be some sort of central authority that coordinates both domestic and foreign intelligence? Should there be a better relationship between, say, the FBI and the CIA, in terms of intelligence gathering?

Mr. MITCHELL. Yes. I think there certainly was, and I presume there still is, great room for improvement in that area. But to get to your specific point of domestic and foreign intelligence, there has got to be a better understanding, because in many areas, you just cannot make a demarcation of which is which, and it is about time that this Government and the courts and a few other people began to realize that. There should be a better control of the total operation, and preferably a greater unification of it.

Senator BAKER. Would you agree that the present situation, in terms of law enforcement and intelligence, probably indicates the need for better congressional oversight of those functions, and that some sort of committee structure having the jurisdiction to legislate and oversee both the FBI and the CIA, or any of the other 62 law enforcement and intelligence operations, would be in order? Would you support a proposal for a joint committee of the Congress on intelligence and law enforcement?

Mr. MITCHELL. Yes; I would do that, Senator. But I must hasten to add that I am not quite sure how effective it could ever be. It seems to me that would be awful difficult, for somebody up in the Congress trying to monitor the operations of the intelligence community. When I say monitor, I mean, their actual operations, not their policies or appropriations or things in that area.

Senator BAKER. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Baker.

Senator Mondale.

Senator MONDALE. Thank you, Mr. Chairman.

Mr. Mitchell, while you were Attorney General, you were apparently under the opinion that mail covers alone were in operation. This involves taking pictures of the outside of an envelope, which, I gather, is legal, and it does not involve the actual opening of the mail. In fact, thousands of letters were being opened, mail from every conceivable source, from Richard Nixon to Arthur Burns to Leonard Bernstein, and the rest, which the record now establishes. Is it your testimony that you never saw the contents of the materials being opened?

Mr. MITCHELL. It is my testimony that I never knowingly saw the contents of any letter that was opened. Now, whether or not material from mail that had been opened was provided to me in memorandums or in other form, I cannot say, but I was not cognizant of the fact that it came from the opening of mails.

The CHAIRMAN. So that you cannot testify that you never saw any of it, but if it did come before you, it came before you in a way that

would not have alerted you as to the illegal method by which it was obtained?

Mr. MITCHELL. That is correct, sir.

Senator MONDALE. Similarly, the Huston plan deliberations occurred, among other things, through the active participation of the FBI, without your knowledge until the very last moment, when either Mr. Hoover or Mr. De Loach came to you, and you then went to the President and had the plan killed?

Mr. MITCHELL. That is correct, sir.

Senator MONDALE. Senator Baker asked you what to do about the apparent actions within the Department of Justice when one of its bureaus engages in illegal activity without informing the head of the Department. One of your answers seemed to be that we ought to get someone as a Director who is accountable and responsible to the Attorney General. Is that correct?

Mr. MITCHELL. Well, in part. But what I intended to convey, Senator, was that it is practically impossible for an Attorney General to monitor everything that goes on in the Federal Bureau of Investigation and that the success of the Bureau will depend entirely upon the man who is the Director of the Bureau, who should carry out the proper policies.

Now, if I might add also to the first part of your sentence, which I believe was part of the question, Mr. Hoover was over in the White House working on the Huston plan apparently in his belief that it was a directive or a request of the President of the United States. This is a little different than the normal activity where the Director does clear his activities with the Attorney General.

Senator MONDALE. Do I take by that answer that you do not mean to imply that Mr. Hoover was unaccountable and unresponsive to the Attorney General?

Mr. MITCHELL. You say he was then accountable?

Senator MONDALE. In other words, are you saying that while you were Attorney General and Mr. Hoover was the Director of the Bureau, it was your judgment that he was fully accountable and responsive to you as Attorney General?

Mr. MITCHELL. Yes, he was. And I would have to add that if the Chief Executive Officer, the President of the United States, gives him directions, I am sure they would supersede those of the Attorney General or anyone else.

Senator MONDALE. Even when the direction was to conduct an illegal act?

Mr. MITCHELL. Well, I do not believe that the President's direction to Mr. Hoover was to conduct an illegal act. I think the direction to Mr. Hoover and the other gentleman involved was to assemble a program for obtaining the appropriate intelligence.

Senator MONDALE. The Huston plan explicitly stated that while many of these tactics are illegal, we should use them anyway. Is it your testimony that had the President ordered the Houston plan, it should have gone forward, despite its illegality?

Mr. MITCHELL. No; that was not the testimony I was suggesting. The testimony I was suggesting is that the President of the United States has broad powers and I would be sure that it would be necessary for each of the recommendations that were made in connection with the

appropriate circumstances to be examined before you can make that blanket determination.

Senator MONDALE. All right. Now, if a President orders an illegal act, is it the duty of the people in the Justice Department to so inform the Attorney General, and is it the duty of the Attorney General then to act to stop it?

Mr. MITCHELL. Well, assuming your premise is of an illegal act, I would believe the answer would be yes.

Senator MONDALE. Now, the opening of mail was clearly illegal, wasn't it?

Mr. MITCHELL. I'm not going to formulate that opinion here and now, because I don't know what the mail was, under what circumstances, who might have given the directions that the mail be opened, and under what authorization, because I cannot give you a blanket answer on that.

Senator MONDALE. How can you say that the Bureau was fully accountable if the Director never told you that the FBI was getting mail illegally obtained by the CIA?

Mr. MITCHELL. I am at a loss, Senator, to know how to answer your question. I didn't say—I don't believe I said the Bureau was fully accountable. I said it should have been fully accountable.

Senator MONDALE. Is it your testimony that the FBI was not accountable?

Mr. MITCHELL. With respect to the circumstances that you are talking about, I would have to know the specifics of it before I could answer your question as to the individual items.

Senator MONDALE. But you were not told at all that they were opening mail, were you?

Mr. MITCHELL. That is correct.

Senator MONDALE. Then how can you say that the FBI was accountable?

Mr. MITCHELL. I haven't said they were accountable. I suggested that they be accountable.

Senator MONDALE. Then are you saying they were not accountable?

Mr. MITCHELL. I believe I could go back over my experiences in the Justice Department and find some areas in which the Bureau was not fully accountable to me; yes, Senator.

Senator MONDALE. And would this be one of them?

Mr. MITCHELL. I would have to get to the specifics of it before I could answer your question.

Senator MONDALE. Can you give us some examples upon which you based your answer that in some instances they were unaccountable?

Mr. MITCHELL. Counsel, I don't think that is part of this hearing, and I don't see any reason for getting into that subject matter.

Mr. HUNDLEY. Mr. Chairman, I think we have an agreement that we would confine the questioning of Mr. Mitchell to the three areas that the committee voted on yesterday. If we are going to delve into such a broad area as where Mr. Mitchell might think that the FBI was unaccountable, I can see that we could stray into areas that I know the committee doesn't want to get into, for the reasons I stated in executive session.

Senator MONDALE. I will withdraw the question.

Senator Baker pursued what I think is a very valuable line of inquiry, in terms of how to make agencies of the Federal Government ac-

countable to the law. You were Attorney General of the United States at that time. It would seem logical, according to the structure of the Federal Government, that the key official who should be held responsible for seeing that the law is observed is the Attorney General. Those questions asked by Senator Baker are very important, and I think we have to find an answer to them. But there is also another question that I think has to be answered; namely, whether it is the judgment of the Federal Government that through its leaders and under the guise of counterintelligence, our Government is permitted to pursue illegal acts against the American people in order to gather such intelligence. Do you feel that there is such authority to go beyond the law for that purpose?

Mr. MITCHELL. Well, it depends on, Senator, what you decide to determine the law is, and how it is interpreted.

Senator MONDALE. That is true.

Mr. MITCHELL. And I think that there has been a tendency to assume that certain acts are illegal and that the powers of the President of the United States don't extend to some of those activities and functions. Obviously, the warrantless wiretapping is one that is a perfect illustration of it, and I think you can carry the question of mail openings into the same field. The same constitutional principle is involved, and you do have the question as to the powers of the President of the United States in the areas of national security and foreign intelligence.

I do not believe that the subject matters have been fully examined. Certainly the courts—our highest court of jurisdiction has not seen its way clear, because cases have not been presented to them, to make these determinations. I think it would be very constructive, in the interest of the American people, that we get on with the determination of what these powers are, and how they should be exercised.

Senator MONDALE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Mathias.

Senator MATHIAS. Mr. Mitchell, a few minutes ago you testified that after the Huston plan had been discarded by the President, you had several discussions with Director Hoover covering topics that were individual portions of the Huston plan. Is that right?

Mr. MITCHELL. Yes, sir.

Senator MATHIAS. Do you recall if any of these included questions of mail openings?

Mr. MITCHELL. To the best of my recollection, Senator, they did not.

Senator MATHIAS. Were you aware that the FBI was, in fact, forwarding requests to the CIA to open specific mail?

Mr. MITCHELL. I was not.

Senator MATHIAS. I believe the testimony before the committee is that it continued to within 2 months of Mr. Hoover's death. Is that so?

Mr. MITCHELL. I was not so aware.

Senator MATHIAS. So that, in fact, although the general area of mail opening had been brought to your attention through the Huston plan, it was concealed from you that this activity was going forward, and that requests were actually being made to the CIA by the FBI to open mail?

Mr. MITCHELL. Well, Senator, I think we ought to again take a minute to find out that the Huston plan said that there was no covert

opening program of the mails, that there was a mail cover program. They opted for the opening of mails. So that my determinations and interest in the subject matter, of course, was responsive to what had been laid out in that document in July of 1970.

Senator MATHIAS. I am interested in the kind of circumstance which is unfolding here, in which the President gives an order which you discuss with Mr. Hoover in the light of the President's action, and we now find a very important part of that order was being disregarded on a regular basis by a number of requests from the FBI to the CIA to survey certain particular mail. This brings up the whole question of executive oversight, in addition to the question of congressional oversight, the latter of which Senator Baker has suggested we consider as part of our hearings.

Mr. MITCHELL. Well, Senator, my response to a comparable question a few minutes ago was that, in my opinion, the only way we are going to have the proper functioning of the FBI is to have a Director who will carry out his responsibilities in his oversight of the Bureau. It is impossible for the Attorney General to do it.

Senator MATHIAS. Perhaps we cannot depend on individuals, on human beings. Maybe we have to think in terms of institutions. And one of our jobs here is to try to understand how we can apply the fourth amendment in the context of the 20th century and in the context of a highly technological society. From your experience as Attorney General, and particularly from your experience in this matter, do you think that any exceptions should be made to the fourth amendment with respect to foreign espionage and intelligence? Do you think that, dealing in this area, a requirement of judicial warrant should be waived?

Mr. MITCHELL. Yes. I can visualize circumstances under which it would be in the interest of the country to do so. I am not accepting all of your language, but as I testified before, the primary responsibility of the President of the United States is to protect this country. And I can understand circumstances which arise where he might have to take certain acts or direct certain acts which, in the light of the discussions that are being held today and through this committee, you might think were illegal and unwarranted.

But in the light of the circumstances, such as Abraham Lincoln dispensing with the writ of *habeas corpus* and a few other things, it might be well justified that an Executive take those actions. But referring to the first part of your question, if you want to have an oversight of the FBI or the CIA, or any of the rest of them, the best way to do it from the Hill is to get your list of things you do not want them to do or do want them to do. Get them up here under oath, swear them in, and ask them if they are doing it or not. And then you will find out.

Senator MATHIAS. Is opening mail among those exceptions that you would consider justifiable? Would surreptitious entry be included?

Mr. MITCHELL. It could very well be, Senator. We will have to examine that in the light of particular circumstances.

Let me give you a hard one. We know that the Embassy of X has got an atomic bomb in its basement that it can put off in Washington, right down here, any time they want to. Now, would you have the protective forces, or whoever is going to handle the job, run down and try

to get a warrant to go in there? You know, you get to some of these questions where there are hard ends on both parts of the spectrum. So I think we ought to try and talk to the principles that you and I have been discussing.

Senator MATHIAS. No atomic bombs have been developed that you can put into an envelope. We are talking about mail here.

Mr. MITCHELL. Apparently somebody has put a few bombs in an envelope, or you would not be having these hearings.

Senator MATHIAS. There are many kinds of bombs.

Mr. MITCHELL. Yes, sir.

Senator MATHIAS. Your illustration was atomic. But is this not the very question? When you decide that you are going to do away with the protection of the fourth amendment, whether it is surreptitious entry or mail opening, that participation of another impartial authority is the heart and soul of the fourth amendment. If the fellow who thinks there is an atomic bomb in the basement, who is convinced of it, who is about to rend the protection of the fourth amendment, is able to go forward on the basis of his own information and caught up with the emotion of his own feeling about the thing, he can go in there and do a tremendous amount of damage.

Should there not be the participation, the institutionalized participation, of another branch of Government—a judge, for instance?

Mr. MITCHELL. Well, I can give you about an hour's dissertation on that, if you want, and I would try to answer you briefly by saying that in the areas of national security and foreign policy, it is my opinion that the Chief Executive of the country is much more qualified to make a determination than somebody sitting over on a bench who has nothing to do with foreign policy, nothing to do with national security, and will be making a judgment in a very restrictive legal light.

Now, I want to get back again to what I said before; and that is, I am hoping that some of the ground rules can be laid out in these areas and established either through judicial proceedings or by determinations of national policy by whomever may, so that you will have a better and clearer understanding as to what functions should be carried out.

Senator MATHIAS. Mr. Mitchell, just to pursue this one step further, isn't the problem with your solution that the Chief Executive, or even the Attorney General, is not always going to give his personal attention to the problem. Here we know, at least from testimony before the committee, that the FBI was actually requesting the CIA to open mail after the President had ordered that it not be done, and after you were at least under the impression that it was not being done.

In the absence of institutions, and depending completely upon individual human beings who happen to occupy a particular office for a particular space of time, we do lose the protections of the fourth amendment.

Mr. MITCHELL. There is great possibility for it, and there is a great history of it. We are dealing again with human beings and human nature, and I do not believe that the fact that there is somebody, a judge, sitting on the bench is going to be any different from the guy who I recommend is going to have to be the one in the FBI to make the proper determinations, and that is the Director. And it will depend

on who the Director is, and under what circumstances he is accountable.

Senator MATHIAS. Justice Powell wrote, I thought, a remarkable decision in which he dealt with this subject. He said :

The fourth amendment contemplates a prior judicial judgment, not the risk that Executive discretion may be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of government.

It seems to me that this institutional approach, with all due respect, is a preferable one that reliance on the individual who holds the job. Thank you, Mr. Chairman.

Mr. MITCHELL. May I comment on that?

Senator MATHIAS. Certainly.

Mr. MITCHELL. I quite agree with what Justice Powell wrote in the circumstances under which he wrote them. But I would hate to have this colloquy left without pointing out that judges can be just as fallible or infallible as Directors of the FBI.

Senator MATHIAS. But they are generally more disinterested in a given case.

Mr. MITCHELL. Hopefully so.

The CHAIRMAN. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Mitchell, just a couple of clarifications. Is it your testimony that when you assumed the office of Attorney General, you were not told of the FBI's or the CIA's mail-opening program in the briefings that you received by your predecessor or by others within the Agency itself?

Mr. MITCHELL. That is correct, Senator.

Senator HUDDLESTON. Were you told by the FBI of their COINTEL Program?

Mr. MITCHELL. No, sir. My first information about that program came from the press.

Senator HUDDLESTON. Would that be one instance where you would agree that the FBI was not accountable?

Mr. MITCHELL. From what I have read in the press and heard from other parties, I would say that that was the case. I do not know the full parameters of their program. From what I know about it, yes, sir.

Senator HUDDLESTON. That would be an area where they certainly should have checked with the chief legal officer to determine its advisability, its legality, its propriety.

Mr. MITCHELL. Yes, sir, and I hope that Senator Mondale understands that this was one of the subject matters that Mr. Hundley referred to that the committee brought to our attention.

Senator HUDDLESTON. You also stated you were never aware of any information that came to you in the way of evidence that had been secured from the mail-opening program.

Mr. MITCHELL. That is correct, sir.

Senator HUDDLESTON. Are you aware of any instance where any testimony had to be excluded from any potential case, or any case had to be dropped or altered because the evidence might have been tainted through improper or illegal gathering?

Mr. MITCHELL. Of mail?

Senator HUDDLESTON. Yes; through the mail-opening program.

Mr. MITCHELL. No, sir, I have not; or at least, I have no recollection of it. As you can well imagine, many of the mechanics of trying cases do not come to the attention of the Attorney General. In fact, it is the exception rather than the rule.

Senator HUDDLESTON. So you have no knowledge of this having occurred?

Mr. MITCHELL. I have no knowledge. It may have happened, but I do not recall it ever having come to my attention.

Senator HUDDLESTON. Mr. Mitchell, there is one thread that has run through all of this inquiry that this committee has undertaken that bothers me, and other Senators have expressed problems that they see in trying to develop the kind of regulation or guideline or law that may be necessary to prevent such abuses from happening again, and that is in the matter of communications.

For instance, we have Mr. Helms' testimony that he did, in fact, brief you on the project, indicating that your approval was given. This assurance was then handed down to those below him who were charged with the responsibility of carrying out the program, and presumably everybody thought that they were cleared to do it.

This same type of thing has occurred in nearly every incident that we have investigated involving the CIA or the FBI in questionable operations. And I find it is as if you were drawing an imaginary line, say, at the level of the Director of the Central Intelligence Agency. Everybody in government above that line has one perception of what they are talking about, and what the instructions are and what the policy is. And everybody below that line has quite a different perception, and they all act, apparently, in accordance with their own conception of what the instructions and the policy are.

Either the U.S. Government and its agencies were operating in very serious matters in a very loose fashion, where there was no clear understanding going all the way from the President down to the person who is carrying out the responsibility, or they were operating in such a way, and probably deliberately, that the record would show that if anything happened that was not supposed to happen, there would be no way to place any responsibility on anybody.

Can you comment for me and this committee, first of all, on the question of understanding and communication? I presume that all persons were using the English language, and I presume that they were using phrases that were common and understood by all. Yet, the perceptions were vastly different. What guidance can you give us on developing procedures that will make absolutely certain that the orders of the President of the United States and the policy of the President of the United States would be understood by those who are going to carry them out?

Mr. MITCHELL. Well, first, Senator, if I may, I presume that I read the same testimony of Mr. Helms that you did, and I don't think it came out quite the way you phrased it here with respect to the difference between Mr. Helms and myself—not as strong as you put it.

Senator HUDDLESTON. You indicate he did not mention the mail opening, but you understood him to talk about covers.

Mr. MITCHELL. I am talking about his testimony which seems to me wasn't quite as strong as you placed it. Second, I think that the one problem, right on the nose, that I can discuss relating to your observations, is the practice that I learned at a later date, sometimes to my chagrin, that when you are dealing with some of these people, they

write what are known as memorandums for the files, and they become the most self-serving documents that you can find. I am not speaking of anything here, but I do say there is great potential for it, and it has happened, and it has happened to me in a number of circumstances.

With respect to the more general aspects of your observation, I think that a lot of government goes on without appropriate consideration of the subject matter, and I think a very good example that is before this committee that can be discussed is the so-called Huston plan. I know from my conversations with the President that he saw that he had a problem of failure of liaison among intelligence agencies, and the proper intelligence to deal with certain problems. He went ahead with the program that he thought was going to carry it out, and the report came in. He said, "fine, go ahead and implement it."

When the contents of the report was called to his attention, it was over and done with. Obviously, with all of his other duties, he had not focused on the natures of that report or its consequences.

Senator HUDDLESTON. That is a good point. It was over and done with as far as the President of the United States is concerned. But many of the things suggested in the Huston plan were, in fact, already going on, and others were initiated after it had ceased to be the policy of the President.

Mr. MITCHELL. That was the last point that you made, and the last one I was going to comment on. I think that it is a very difficult area. It always has been in government, and it always will be. We do not always deal with such high-level matters as the first and fourth amendments, and national security and national intelligence. But you can go into any one of these departments or bureaus in this Government, and you find somebody down in those lower levels that are trying to structure a policy of their own that is contrary to what the Secretary or the Director is trying to put in operation. It has been going on since government was founded.

Now, they may not do it as blatantly as has been done here, in connection with a direct statement that such and such did not exist when, in fact, it was being carried out. But there are always those in these bureaucratic positions in this Government who are going to try and structure their own policies, and most of the time it is done with good intent.

I believe that, as I testified before with respect to the FBI—about which I know a little bit more than some of the other agencies—that our salvation is a proper Director who is serving for an appropriate period of time. The second aspect of it is the oversight of somebody. If you want to, in the area we are talking about, create a foreign and domestic intelligence board that will sit and monitor this, that is one thing. If you want to do it through congressional committees, that is another. But I am sure that there can't be too much oversight, if that is a proper word, with respect to sensitive areas.

Senator HUDDLESTON. What about the question of establishing a record within an agency, for instance, to determine precisely who did what, and why? You mentioned a memorandum. In some instances, we do find the very kind of memorandum to which you referred. Somebody would apparently put it in writing very quickly so that there would at least be a record of his or her view of what went on

at a particular meeting. But often, we do not find memorandums from other people that might either substantiate that or differ from it. In some cases, we find nothing on paper at all, where all the instructions and orders went down verbally. Then at each level, there is a little different understanding of what they actually were.

Is it feasible to develop some sort of policy where it would be a requirement that from the very top to the bottom, that there be on record written instructions indicating the policy, indicating how that policy was going to be implemented, and whether or not it was implemented?

Mr. MITCHELL. Yes, Senator, I would subscribe to that, at the level of the subject matter that you are talking about; in other words, matters of policy and directions for implementation. But, as I'm sure you are well aware, you can bog down government to the point where it will only function if all you do is write memorandums, and there are too many of them written—

Senator HUDDLESTON. I recognize that.

Mr. MITCHELL [continuing]. On inconsequential subject matters now.

Senator HUDDLESTON. You can also get into a situation that we have discovered as part of our inquiry, in which programs are implemented at the lower levels in a way quite different from what was intended a few echelons upward. Those who were responsible had no way of knowing whether their orders had been carried out, and some had been surprised to learn here, as you have been, that some of their understandings at that time were totally wrong.

Mr. MITCHELL. Yes; as I testified in response to your last question with respect to what the policy is, and how it is to be implemented, there is no doubt but what there should be a memorandum, a writing order, whatever it might be, on the subject matter. Otherwise, the individual is given somewhat of a free pass at what he thinks it might be.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Mitchell, when you served as Attorney General, did you approve FBI requests for warrantless wiretaps?

Mr. MITCHELL. Yes, sir.

Senator SCHWEIKER. In your judgment, what is the difference, if any, between warrantless wiretaps and warrantless mail openings? Do you see any legal difference here, aside from the specifics of the situation?

Mr. MITCHELL. Senator, I haven't examined the question of mail openings. I believe I indicated before that there could be similarities in certain cases. I indicated that perhaps the same constitutional and legal principles applied. But I don't want to give you a definitive legal opinion on the subject matter without getting further into it. I think I would like to leave my answer as saying that there is a distinct possibility that there are similarities.

Senator SCHWEIKER. According to my opinion—and of course, yours may differ from this—I think the statutes prohibit warrantless mail openings. Now, if they did, and that is a presumption with which you may or may not agree, would you favor amending the law to allow warrantless mail opening for national security cases?

Mr. MITCHELL. I would like to examine the question a lot more in depth than I have, but I think it is a subject matter that should very well be considered. And I would point out that in connection with mail openings, you may have a little different time frame, and you should consider the desirability or the potential of using warrants in connection with it, based on the probable cause question that we have in wiretaps where we do seek court approvals.

Perhaps the thing here would be to show probable cause in connection with parties to the mailing, which would be helpful, rather than to give an indiscriminate right of somebody to make a determination that A and B were involved in some sort of a conspiracy and then, therefore, you can open their mails. Because this can hold the mail in the Post Office for a day while you go to the court with an affidavit showing a probable cause.

Senator SCHWEIKER. On Wednesday, Mr. Blount said that Mr. Helms told him that Helms had asked you for a legal opinion concerning mail opening. I believe you testified that this was not the case. Is that correct?

Mr. MITCHELL. I testified that, to the best of my recollection, there was no such discussion, and as you are probably aware, Senator, legal opinions out of the Justice Department are a very lengthy, involved process. It goes through the Office of Legal Counsel. They are not given by the Attorney General sitting at his desk.

Senator SCHWEIKER. I gather from your previous answer that you would probably favor some statutory authority that would require some written legal opinions in these sensitive areas, so that there is no question what the positions of a future Attorney General or the Justice Department would be in some of these areas. Is that a fair assumption, based upon your other answers, or not?

Mr. MITCHELL. If I could paraphrase it just a bit, I think it is a subject matter that needs a great deal of consideration to determine where we go from here, to make sure that actions with regard to opening mails or whatever it may be receives full exploration, perhaps judicial determination in constitutional areas, and a full recognition, however, that there are many aspects of this that have now been downgraded for various reasons that may turn out to be, in the future, very much in the interest of this country.

Senator SCHWEIKER. The records of the FBI indicate that until 1966, the Bureau had programs in which mail was opened, but the Attorney General was not advised of such programs and such openings. Do you agree that all Bureau programs of questionable legality or marginal areas such as this should be cleared in advance by the Attorney General? Is that your concept of the role of the Attorney General?

Mr. MITCHELL. Well, it is certainly a very important role of the Attorney General with respect to the Federal Bureau of Investigation. If they are even on the borderline with respect to these practices, it certainly should be called to the attention of the Attorney General and his determination made with respect to it.

Senator SCHWEIKER. You said earlier in your answers that you would favor greater control and greater unification of the intelligence services, which I think is a feeling that many of us on this committee would share. One of the proposals that has been put before us for

consideration calls for a stronger role for the Inspector General, who would have authority to go into certain of these areas and to report either to the President or to the Chairman of the Foreign Intelligence Advisory Board. Did you have this concept in mind when you mentioned greater control or unification? If not, exactly what were you referring to?

Mr. MITCHELL. There are two subject matters. One of them is unification or liaison, or whatever basis upon which you discuss it. And the other is the oversight question. If you had an Inspector General on top of the Director of the FBI or the CIA, why that is just another layer of individuals. I think that probably won't hurt anything. It may help things. It may also cause another bureaucratic foul-up.

My thoughts in connection with what Senator Baker and I had to say more in the line of a high-level oversight commission, plus congressional oversight, and I think, out of all that has been going on and kicking around, if some of your congressional committees, whoever they are, a special committee, were to put some good people together, we have learned what the bad points are. We have learned what some of the good points are. And if they just got a checklist, and as I said before, got the Director of the FBI and the CIA up here under oath and said, "Now, are you doing this, are you not doing this, down the line," you could have a little bit better oversight than some of the colloquies that are carried on when you get up before committees on the Hill.

Senator SCIIWEIKER. That is all the questions I have, Mr. Chairman.

The CHAIRMAN. Yesterday, as you know, Mr. Mitchell, Mr. Helms was here. He testified on the very question of whether or not he did, in fact, inform you that the mail was being opened when he spoke to you about the general plan, and I would like to read to you Mr. Helms' response when he was asked that question. If you would like to follow me, it is on page 1090 of the transcript of yesterday's proceedings.

Mr. MITCHELL. Yes, sir. I think we have it.

The CHAIRMAN. All right. Mr. Schwarz had asked—

Now, is it your testimony that you told him about a mail-opening operation?

And we had a long, rambling answer from Mr. Helms that went this way:

Well, I can only say, Mr. Schwarz, to be fair to everybody concerned, that I am not sure that everybody in Washington is as nearly familiar about the distinction between these two things then as they are now. I mean, everybody in this room knows exactly what the two things are, but in those times, I am not sure that necessarily the Attorney General would have known the difference. I do not recall, therefore, being in a battle of terminology with him. I thought I had gone down to explain something that was going on and the usefulness of the information we had, and in fact, we would like to preserve the operation, that we were going to have a problem.

Then Mr. Schwarz said—

That just is an unsatisfactory answer. Did you tell him you were opening the mail or not?

To which Mr. Helms replied,

I am sorry you find it unsatisfactory because I don't recall whether I said specifically we are opening x number of letters, but the burden of my discussion

with him—I don't see how it could have left any alternative in his mind, because how do you find out what somebody is saying to another correspondent unless you have opened a letter.

Mr. Schwarz then said—

All right, so you did tell him?

Mr. Helms said,

That is my recollection.

Mr. Schwarz then said—

Did you tell him information about what could only have come from the contents of the letters?

Mr. Helms said,

I thought so, sir.

Now, that being Mr. Helms' testimony, he left this committee with the clear impression that he had told you enough about this operation that in his judgment, you must have known that letters were being opened. Now, are you telling us today that that was not so?

Mr. MITCHELL. I am telling you today that that was not so, and I wish the staff would call your attention to some of the other parts of Mr. Helms' testimony, where he said he came to talk to me about another subject matter, and other parts that relate to this. I also wish that your counsel had asked Mr. Helms what it was that he showed me out of the letters, because there is no reference to it, or anything else in here.

But I am affirming again, that to my recollection, he did not either show me any material—nor did anybody else from the CIA—that came out of any letter, that his conversation was such that it led me to believe—and I guess it could have been based on the Huston plan and the references there—that he was relating to mail covers and not mail openings.

The CHAIRMAN. Since mail covers are legal, why would he come to talk to you about something that was legal and ongoing? The FBI was doing it. The CIA was doing it. Why would he make such a special thing about a matter that was so well known and routine and legal?

Mr. MITCHELL. Senator, as my testimony has stated, and Mr. Helms has referred to in his testimony, he came to me to talk about another subject matter. The other subject matter, which is the one we had dialog about what I wouldn't testify to, was in a similar area, and it is my recollection that he made a reference to this matter as being comparable to it.

The CHAIRMAN. And since that reference took such a form as to lead you to believe that he was simply talking about mail covers, then what you are really telling us today is that Mr. Helms misled you?

Mr. MITCHELL. I'm not saying that at all. I'm telling you of what my recollection and understanding was of the subject matter, and the last thing I would do is characterize anybody's testimony up here, that I did not hear, nor have not read.

The CHAIRMAN. I have read you the answer to this particular question. Mr. Helms clearly conveyed to this committee that he believed that he told you about opening the mail. You have said that your recollection is that he told you only about mail covers.

Mr. MITCHELL. That is correct. We go back to Senator Huddleston's observations with respect to the dialog between individuals.

The CHAIRMAN. Therefore, you are saying he misled you, because what was going on was something far beyond mail covers; it was the opening of the mail.

Mr. MITCHELL. Senator, you are implying an intention on the part of Mr. Helms to mislead me. That may not have been the case at all. I don't know. I'm telling you what I understood was the basis of his conversation.

The CHAIRMAN. All right. What you understood was quite different from what was, in fact, going on, and he did not convey to you the mail-opening operation, isn't that true?

Mr. MITCHELL. That is my understanding of the conversation that we had, that I have testified to on any number of occasions.

The CHAIRMAN. Do you know whether President Nixon had knowledge of the mail-opening program?

Mr. MITCHELL. I would believe not, because of the—or at least not as of the time we discussed the Huston plan. I would believe he did not.

The CHAIRMAN. You have suggested that, without having further details concerning the program, you cannot give us a judgment on whether or not it was legal. Now, we have read into the record several times what we understand the law to be, the statutes that relate to this matter, and the Supreme Court decisions over the years that relate to this matter. The Agency itself has acknowledged the illegality. And so, the illegality of opening mail is really unarguable, but then you say you believe that the President may open mail for reasons of national security, even though the laws prohibit it.

Mr. MITCHELL. I didn't say that, Senator.

The CHAIRMAN. What did you say?

Mr. MITCHELL. Well, if your stenographer can go back and get the record, we can get the question and answer specifically.

The CHAIRMAN. Mr. Mitchell, you did say you could not give your opinion as to legality?

Mr. MITCHELL. That is correct.

The CHAIRMAN. And you did say that there is an area in which the President has special responsibilities in national security affairs?

Mr. MITCHELL. That is correct.

The CHAIRMAN. And the implication was that this may be one of those places where the President has power to disregard the law. What other implication can you draw?

Mr. MITCHELL. Senator, you're getting in the same situation with me as Mr. Helms and I apparently got into. The implication was that I went on to say further that I would recommend that a detailed account be made of the total picture, and I think it was in response to that general type of question that I gave that answer, not with respect to the statutory provisions and all of the rest of it having to do with a particular mail cover.

The CHAIRMAN. So, this committee is involved in just such an investigation with the hopes that we can come forward with recommendations in this area, and in many other areas. But even if one were to accept the need to clarify this area, and to draw the lines more clearly, and even if one were to agree that under some circumstances, the national security interests might be so great as to entitle certain

kinds of operations to go on under proper guidelines and controls, here was a situation of which the President was not even aware. How in the world can the President exercise meaningful control when the agencies of the Government are conducting dubious operations and the President has no knowledge of them, the Attorney General has no knowledge of them, until after the fact? Recommendations go to the President, first he approves them, then he turns them down, and the same practice is continued, just as though he weren't there. Now, that is the record that is before this committee.

Mr. MITCHELL. Well, is that a question, Senator? Do you want a comment?

The CHAIRMAN. That being the state of the record, I would like such comment as you would like to make.

Mr. MITCHELL. My comment is to the effect that I think you are doing a very fine job with respect to a determination as to what the facts are, so that somewhere along the line, the proper body, whether it be this committee, whether it wants to undertake it, or you may have to go further, to the Congress, or up to the courts, will define the powers of the President, and hopefully proscribe guidelines under which they should be exercised and in what cases.

The CHAIRMAN. That is what we propose to do, Mr. Mitchell.

Mr. MITCHELL. I wish you well.

The CHAIRMAN. Any further questions?

Senator Mondale, would you take charge of the hearing at this point?

Senator MONDALE [presiding]. Senator Baker, do you have any questions?

Senator BAKER. I have no questions at this time.

Senator MONDALE. Mr. Mitchell, suppose we were holding hearings while you were Attorney General, while the Counterintelligence Program (COINTELPRO) and these mail openings were going on, and they were going on without your knowledge. Suppose the committee called you up to find out what was going on in the Department and asked you questions about whether there were current mail openings or COINTELPRO activities? How would you answer that question?

Mr. MITCHELL. As to whether I would come or not?

Senator MONDALE. We used to have that problem, too. Let us put that behind us.

Mr. MITCHELL. What is the question that you would like me to answer?

Senator MONDALE. I will try to ask it again. Suppose we have set up this joint committee on intelligence that has been recommended.

Mr. MITCHELL. Yes.

Senator MONDALE. The committee wants to know what has been going on in the FBI that might be illegal. So they call the Attorney General before it and they ask him questions that concern mail openings and so on. How would you answer the committee under that circumstance?

Mr. MITCHELL. Well, we are dealing, I guess, in an academic field.

Senator MONDALE. In one sense, but that would have been the predicament then, would it not?

Mr. MITCHELL. No; it would not have been the predicament, because I would have pursued it on the basis—and it is still academic, because we do not have the subject matters before us as to what the subject

matters of the inquiry were, and what effect the public disclosures of them might have with respect to the national security and the foreign intelligence of the Government.

And then I believe I would have followed what has always been my understanding of the law, that executive privilege, which is what you are asserting, can only be asserted by the President, so you would have to, as Attorney General, go to the President and have him determine whether executive privilege was to be exercised or not.

Senator MONDALE. Let us suppose we asked you if they were opening mail at Kennedy Airport in New York, and you said, "I cannot answer that on the basis of executive privilege," and the President said, "yes, you can." What would you have answered?

Mr. MITCHELL. Well, just on that basis, if they were opening mail, period?

Senator MONDALE. Yes.

Mr. MITCHELL. I would have had no problem of coming up and testifying to what I know under the circumstances and on the basis of the question you asked. A mere physical act of opening the mail does not seem to me to affect our national security or foreign policy, the fact that mail was being opened. What mail might be opened and so forth is a different subject matter.

Senator MONDALE. How would you have answered the question if you did not know? In other words, there were two massive programs going on about which you were unfamiliar: one, opening thousands of letters in New York; and another, called COINTELPRO, which was investigating, even intimidating and harassing American citizens all over the country, and sometimes using the IRS in one way or another to achieve those aims.

Now, my question is, how would a CIA oversight committee or an FBI oversight committee be able to know it was getting the truth if the Attorney General of the United States did not know it himself?

Mr. MITCHELL. Well, Senator, if that is the thrust of your question, I think it is the point, if you ask me as Attorney General, "are you opening the mail through the Federal Bureau of Investigation?" I would say "I do not know but I will damn well find out."

Senator MONDALE. That is right. And the reason you would want to know is because it is your duty to know.

Mr. MITCHELL. It is the duty to the point of view that the Attorney General has the FBI and the Justice Department and is responsible to the extent that he can control them for the policies of the FBI.

Senator MONDALE. Do you think such an oversight committee would have the right to assume that the Attorney General knows what is going on in his Department on matters like these?

Mr. MITCHELL. I would hope not. I would hope they would never assume anything, based on what we all know about what goes on in government.

Senator MONDALE. You see, that is what scares me, because unless we clearly define what the limits of these agencies are—and I think the limit has to be defined by law—then all we have left, if we want real oversight, is to set up an oversight committee which spies on the spies. And we will have to have a one-for-one relationship around this country. Since we cannot even be sure that the Attorney General and, we now know, the Postmaster General, know what is going on. We will

have to have another parallel system where we follow the investigators and the spies. Then, based on our outside investigations of the investigators, we will decide whether what they are doing is appropriate.

Mr. MITCHELL. You are making a very eloquent argument for my contention that it all has to rest with the Director of the Federal Bureau of Investigation to control the activities of his men within the Bureau.

Senator MONDALE. And would you agree that the limits of his activities are defined by the law? In other words, he cannot conduct illegal acts?

Mr. MITCHELL. I think we can state that without equivocation, yes, sir.

Senator MONDALE. That is right. And you would agree that when the CIA, the FBI, the IRS, or any other investigative agency acts in the United States, it does not have the authority to go beyond the law?

Mr. MITCHELL. It does not.

Senator MONDALE. We will now turn to Senator Schweiker.

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

Mr. Attorney General, you said a minute ago that it was your belief that President Nixon had no knowledge of mail opening. You say as Attorney General and chief law enforcement official, that you had no knowledge of mail opening. Two days ago we heard from Postmaster General Blount, and he testified, to the best of his knowledge, that he did not know the mail was being opened.

My question is very simple. Mr. Mitchell, who was running the Government?

Mr. MITCHELL. Are you talking about the mail opening part of the Government, or the rest of it?

Senator SCHWEIKER. I think after hearing the answers I may be talking about all of it, but right now I am talking about mail opening.

Mr. MITCHELL. Apparently, from what I have read in the newspapers—and that is where my knowledge comes from—the old school tie boys who had been doing it for 20 years just decided they were going to continue to do it.

Senator SCHWEIKER. We certainly have a situation that seems to be out of control, whereby some people were deceived by a lot of other people. This situation, I think, is something the committee has to deal with in the future.

That is all I have, Mr. Chairman.

Senator MONDALE. Senator Huddleston?

Senator HUDDLESTON. Mr. Mitchell, in whatever briefings did occur between you or Mr. Helms or any other person relating to this matter, were you ever informed that the Postmaster General was not being told the true nature and extent of this project?

Mr. MITCHELL. I am puzzling with your question, "of the true extent and nature of the project," since I did not know the true extent and nature of the project. Obviously I was not told that the Postmaster General was not informed.

Senator HUDDLESTON. Was there any suggestion that this was a project of which the Postmaster General was not fully aware?

Mr. MITCHELL. Well, when you talk about project, if you are talking about mail opening—

Senator HUDDLESTON. Were you given specific knowledge, or even an impression, that the Postmaster General was being deprived of

knowledge, the total nature of any project that the FBI or the CIA conducted involving the mails?

Mr. MITCHELL. No. I recall no circumstances where I ever became aware of the Postmaster General being apprised of the nature of the project, as you have described it.

Senator HUDDLESTON. You are surprised to learn now that those Postmasters General who were here yesterday or the day before testified that they did not know that mail was actually being opened?

Mr. MITCHELL. No; I am not surprised at that at all.

Senator HUDDLESTON. Was this a commonly accepted practice, then, within Government as you know it, that one agency would become involved in another agency's responsibility without advising the head of the other agency what it was doing?

Mr. MITCHELL. I am speculating, because I do not know, and I only know what I have read in the papers. But I would speculate to the point that this was something that—whenever it got started and by whom and under what circumstances, I do not know. Knowing the cautious nature of so many of these people. I would believe that somebody in the Post Office at a pretty good altitude knew about it, whether it was the Postmaster General or a lesser degree; and that once the practice got operating, I can see how Postmasters could come and go and they would never find out about it, because the mechanics for it was established.

Senator HUDDLESTON. Suppose there were a strict prohibition against the FBI, the CIA, or anybody else operating within another agency without fully and regularly informing the head of that agency. Would this not be one way to then assure more accountability?

Mr. MITCHELL. I would certainly subscribe to that.

Senator HUDDLESTON. The head of such an agency would be informed on some kind of a regular, continuing basis.

Mr. MITCHELL. I would subscribe to that most wholeheartedly.

Senator HUDDLESTON. I am sure that you, as Attorney General, would not appreciate the CIA or any other entity coming over and utilizing your personnel for questionable purposes without your being aware of it.

Mr. MITCHELL. You are absolutely right. It was not the CIA, but I did have a few of those problems which were soon put to rest.

Senator HUDDLESTON. I am certain that occurs.

Thank you, Mr. Chairman.

Senator MONDALE. Mr. Kirbow?

Mr. KIRBOW. Thank you, Mr. Chairman.

Mr. Mitchell, you first took the oath as Attorney General on January 22, 1969. Would you tell the committee again the first time you knew for sure that the FBI or the CIA was involved in mail opening projects?

Mr. MITCHELL. I presume when I read it in the newspapers whenever it got out of wherever it got out of.

Mr. KIRBOW. Would that have been before you saw the so-called Huston plan in January of 1970, or after that?

Mr. MITCHELL. No. It would have been long after I saw the Huston plan. The Huston plan, in effect, states that they were not involved in mail openings.

Mr. KIRBOW. I would like to pursue that with you just a moment. Would you or your attorney please turn to exhibit 11¹, which is entitled "Special Report."

Mr. MITCHELL. "Special Report of the Interagency Committee"?

Mr. KIRBOW. Yes, dated June 1970. Please turn to page 29 where mail coverage is discussed, sir.

Mr. MITCHELL. Yes, sir.

Mr. KIRBOW. I would like to draw your attention to the last two sentences of the first full paragraph by reading them for the record at this point.

Under preliminary discussion the following—

Covert mail coverage, also known as "sophisticated mail coverage" or "flaps and seals." Entails surreptitious screening and may include opening and examination of domestic or foreign mail. This technique is based on high level cooperation of top echelon postal officials.

And in the next paragraph under the nature of restrictions, this sentence—

Covert coverage has been discontinued, while routine coverage has been reduced, primarily as an outgrowth of publicity arising from disclosure of routine mail coverage during legal proceedings and publicity afforded this matter in congressional hearings involving accusations of governmental invasions of privacy.

Looking at those words, Mr. Mitchell, is it fair to say that almost any reasonable man, be he an attorney or not, including you and the President, should have been on notice that this had been an ongoing program which had been phased out for some reason?

Mr. MITCHELL. No; I think it is just to the contrary.

It says—

"Covert coverage has been discontinued, while routine coverage has been reduced, primarily. . ." and so forth. As I understand covert, that is the openings, and routine is the mail cover aspect of it.

Mr. KIRBOW. It says it has been discontinued. That did not indicate to you that there had been an ongoing program at some time in the past where the mail was actually opened?

Mr. MITCHELL. It might have in the deep, dark past, but—

Mr. KIRBOW. Does it indicate that to you now, Mr. Mitchell, reading those same words?

Mr. MITCHELL. Well, I think the important part is when it had been discontinued. Since they were opting in the Huston plan to use that as one of the tools in their intelligence-gathering operation, I assume that it might have been any time in the deep, dark past, but certainly not in the immediately preceding time frame.

Mr. KIRBOW. If I could then direct your attention to page 30 under "Covert coverage, point 1," where it states:

High level postal authorities have in the past provided complete cooperation and have maintained full security of this program.

Speaking of the covert coverage that we just discussed, did that indicate to you, or does it now indicate to you, that this had been a program involving the high level postal officials and either the FBI or the CIA in the past?

¹ See p. 211.

Mr. MITCHELL. Well, I think that the language you have read refers to the postal authorities. The statement is quite clear, I would think, as to the fact that they had been knowledgeable and cooperated in the past; how far in the past, I could not guess.

Mr. KIRBOW. From reading the cover sheets and other parts of this report, it had to be obvious to you that Mr. Hoover and Mr. Helms took part in preparing a report that went forward, because it bore both their signatures.

I would like to ask you, at that time when you and the President were discussing the so-called Huston plan, did you have any discussion about making absolutely certain that this was not still going on or being sure that the laws of the land were being obeyed, as far as covert mail opening was concerned?

Mr. MITCHELL. Let me see if I can answer your question in two parts.

My testimony has been that the President got word to me, either told me directly or got word to me, that he had called off the implementation of the Huston plan. That would carry with it, without any detailed discussion—which I have no recollection would follow up—but would carry with it a Presidential determination that the authorizations contained in the Huston plan would not be carried out.

Mr. KIRBOW. At that time Mr. Hoover was still the Director of the FBI and worked directly for you; did he not, Mr. Mitchell?

Mr. MITCHELL. Yes, he did. He worked directly under me. I am not sure he worked directly for me.

Mr. KIRBOW. I appreciate your position.

Did you at that time or any time thereafter discuss with Mr. Hoover any aspects of the covert mail program to insure that it was not continuing in the Department?

Mr. MITCHELL. No, sir.

Mr. KIRBOW. Did you not have the duty to do so?

Mr. MITCHELL. I do not believe so, because of the fact that I had no knowledge that the Department, meaning the FBI and Justice, was doing anything at all with respect to covert mail activities.

Mr. KIRBOW. How do you reconcile that answer really, Mr. Mitchell, with the answer that you gave Senator Mondale a moment ago where you said, "I would certainly have a duty to know if I were the Attorney General"?

Mr. MITCHELL. I forget what the subject matter of the question was.

Mr. KIRBOW. The same general premise, that you should know what is going on in the FBI.

Mr. MITCHELL. As the Attorney General, you have a duty to know whatever is going on in the FBI; your ability to obtain the information is an entirely different matter.

Mr. KIRBOW. You did not, though, at any time, inquire into this matter to carry out your duty to know and to prevent abuses of the law of the land in the covert mail-opening program?

Mr. MITCHELL. I think I have testified, and will again, that it was my assumption that based on the Presidential directive to not implement the Huston plan, that it would be unnecessary for me to go over and find out if the Director of the FBI was carrying out a policy contrary to one that had just been laid down by the President of the United States.

Mr. KIRBOW. Thank you, Mr. Chairman.

Senator MONDALE. Senator Hart?

Senator HART of Colorado. I have no questions on this subject.

Senator MONDALE. Mr. Schwarz?

Mr. SCHWARZ. Following further Mr. Kirbow's line of questioning, you do agree, do you not, that the document dated June 1970 does reveal that in the past at least, mail had been opened?

Mr. MITCHELL. I believe that is the implication, yes.

Mr. SCHWARZ. And it does state in the document that the opening of mail is illegal; does it not?

Mr. MITCHELL. I believe that with reference to a number of subjects were illegal and I think opening mail was one of them.

Mr. SCHWARZ. All right. Then based upon your knowledge from an examination of the document, which shows that in the past at least, illegal actions involving the opening of mail had taken place, did you convene a grand jury to look into the admitted acts of illegality on behalf of some intelligence services?

Mr. MITCHELL. I did not.

Mr. SCHWARZ. And why not?

Mr. MITCHELL. I had no consideration of that subject matter at the time. I did not focus on it and I was very happy that the plan was thrown out the window, without pursuing any of its provisions further.

Mr. SCHWARZ. Are you now of the opinion that if you had had time to focus on the matter then, it would have been wise to convene some investigation within the Department to determine what had happened in the past?

Mr. MITCHELL. I believe that that would be one of the normal processes where you would give it initial consideration and see where it led to, what the statute of limitations might have been and all of the other factors you consider before you jump into a grand jury investigation.

Mr. SCHWARZ. Excepting those factors, do you agree that you should have at least considered the matter?

Mr. MITCHELL. I think if I had focused on it I might have considered it more than I did.

Mr. SCHWARZ. I have nothing further.

Senator BAKER. Mr. Chairman, I have a question.

Senator MONDALE. Senator Baker?

Senator BAKER. I have no quarrel with Mr. Schwarz's questions. They are valid questions, but it seems to me we ought to keep things in perspective here. You know we have a whole interagency report that proposes a whole lot of bad things, or at least I think they are bad things, and many of them were illegal. They wanted the President of the United States to approve it. He signed off on it and this is the man who said, "No, change your mind and withdraw it."

It is entirely possible that perhaps Attorney General Mitchell should have thought a little further and said, "Look, let us check into that business." Maybe you did these things in the past and that is the basis for this recommendation, maybe so. But I think the record clearly ought to carry the notation of the fact that John Mitchell is the man who withdrew Huston plan, or convinced the President to do so. And let us not detract at least that credit.

Mr. SCHWARZ. If I gave any implication that I was seeking to detract from that point, Senator Baker, I did not intend to.

Mr. MITCHELL. Senator, if I might just make a comment?

Senator MONDALE. At this point, I think we also ought to put this memorandum [exhibit 15¹] from Mr. Dean to Mr. Mitchell in the record, which says that, "I believe we agreed that it would be inappropriate to have any blanket removal of restrictions". . . This excerpt from the memo refers to the Huston plan. . . .

rather, the most appropriate procedure would be to decide on the type of intelligence we need, based on the assessment of the recommendations of this unit, and then to proceed to remove the restraints as necessary to obtain such intelligence.

Mr. MITCHELL. Well, Senator, restraints are not the same as referred to in the Huston plan. As you know, Mr. Dean—

Senator MONDALE. As a matter of fact, that is exactly what that referred to, because it was immediately after the denial of the Huston plan that you and Mr. Dean got together, prepared this memo and said, "Well, what the Huston plan—

Mr. MITCHELL. You are wrong on that, Senator. Mr. Dean and I didn't get together. Mr. Dean brought the memorandum over to my office from the White House.

Senator MONDALE. "Pursuant to our conversation yesterday," it says. Did you not have such a conversation?

Mr. MITCHELL. We had a conversation about Mr. Dean—

Senator MONDALE. On September 17, 19—

Mr. MITCHELL. I don't recall the date—about Mr. Dean coming over to see me about the subject matter. And I would like the record to show that Mr. Dean's recommendations were not implemented.

Senator MONDALE. Is there some record that you disapproved of this memo?

Mr. MITCHELL. Yes; there is testimony in volumes and volumes.

Senator MONDALE. Can you refer me to it?

Mr. MITCHELL. We will be glad to provide it for you. It is in the Senate Select Committee of which Mr. Baker was present. It is in, I believe, the House Judiciary Committee testimony and a few other places.

Senator MONDALE. I look forward with great anticipation to seeing it.

Mr. MITCHELL. And let me call your attention to the fact that the outgrowth of this was the establishment of a liaison intelligence function to try and get at the problem where the CIA couldn't talk to the FBI and the Bureau of Alcohol, Tobacco, and Firearms didn't provide the information to the FBI. And we tried to cure this hiatus that existed among the intelligence communities. And it wasn't too bad a job at that. We at least knew when they were trying to tear down Washington.

Senator MONDALE. And one of the things that happened after this was that all of the things recommended in the Huston plan went forward.

Mr. MITCHELL. You will have to document that for me some time.

Senator MONDALE. You were the Attorney General. Can you say whether it was true or not?

¹ See p. 225.

Mr. MITCHELL. I do not believe that what was recommended in the Huston plan went forward.

Senator MONDALE. What part did not?

Mr. MITCHELL. If you give me a couple of hours to study it and analyze it and analyze the record, maybe I can answer it for you.

Senator MONDALE. I think you would need at least 2 hours.

Mr. MITCHELL. I would think so too, Senator.

Senator MONDALE. Any other questions?

Thank you, Mr. Mitchell.

Our next panel of witnesses are four persons from the FBI.

Would you stand and be sworn, please? Do you swear that the testimony you are about to give will be the truth, the whole truth, so help you God?

Mr. WANNALL. I do.

Mr. MOORE. I do.

Mr. BRANIGAN. I do.

Mr. MINTZ. I do.

Senator MONDALE. Would you introduce yourself for the record, please, and then the questioning will begin.

Mr. WANNALL. I'm W. Raymond Wannall, Assistant Director, Intelligence Division of the FBI.

Mr. MINTZ. I'm John Mintz, the legal counsel to the Bureau.

Mr. BRANIGAN. Mr. Chairman, I'm William A. Branigan, and I am the Section Chief of Counterintelligence No. 1 in the FBI.

Mr. MOORE. Mr. Chairman, I'm Donald E. Moore. I retired from the FBI as Inspector in June 1973.

Senator MONDALE. All right.

Would you begin the questioning, Mr. Schwarz?

Mr. SCHWARZ. Mr. Chairman, we have had an opportunity to talk to these gentlemen in executive session previously.

Mr. Mintz is legal counsel and the dialog with him occurred last Tuesday when we discussed various questions of warrants. He has nothing by way of first hand knowledge on the subject of mail opening.

Beginning with you, Mr. Wannall, could each of you state briefly for the record what your connection was with the mail opening subject, and what your knowledge about this project is now and was at that time.

TESTIMONY OF W. RAYMOND WANNALL, ASSISTANT DIRECTOR, INTELLIGENCE DIVISION, FBI; WILLIAM BRANIGAN, SECTION CHIEF OF COUNTERINTELLIGENCE, FBI; DONALD E. MOORE, FORMER FBI INSPECTOR; AND JOHN A. MINTZ, ASSISTANT DIRECTOR, LEGAL COUNSEL DIVISION, FBI

Mr. WANNALL. In two separate programs I had a direct connection in that they were carried on or instituted at the time that I was the Chief of the section which had responsibilities for those particular programs or phases of programs.

Mr. SCHWARZ. Mr. Branigan?

Mr. BRANIGAN. Mr. Chairman, I was the Section Chief, within which section I supervised—I had responsibility for five specific programs involving the FBI.

Mr. MOORE. I was the Inspector in charge of the branch from mid-October 1956 until my retirement in June of 1973, the branch in which these programs were carried on.

Mr. SCHWARZ. Mr. Chairman, I will attempt a summary of the key facts about the FBI programs. I would appreciate it, gentlemen, if you would correct me should I state things that appear to you to be inaccurate.

Now, the FBI mail-opening programs began during the Second World War and, with a short interruption after the war, lasted until 1966. Is that right?

Mr. WANNALL. That is correct.

Mr. BRANIGAN. I would like to correct that. It is my recollection that they probably began immediately prior to World War II.

Mr. SCHWARZ. I think that is true. They began in 1940. Other people were in the war; we were not yet.

And there were eight major programs. Is that correct?

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. And they involved approximately eight cities in the United States.

Mr. WANNALL. I will accept your number, Mr. Schwarz.

Mr. SCHWARZ. All right. And in addition to the major programs, there were some isolated instances where, in connection with particular espionage matters, you had mail-opening programs directed at particular individuals who may have been suspected of being involved in espionage activities.

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. Thank you. Now, why were the FBI mail programs suspended in 1966?

Mr. WANNALL. At that time, Mr. Hoover instructed that this technique be suspended, along with others.

Mr. SCHWARZ. And was this at the same time he instructed that surreptitious entry—that is, breaking into places—be suspended?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. And trash covers and certain other things were also to be suspended?

Mr. WANNALL. Yes, sir.

Mr. SCHWARZ. What is your understanding as to the reasoning for that series of actions taken in 1966?

Mr. WANNALL. I think I would have to interpret what was in Mr. Hoover's mind, which would be difficult. But I do think that Mr. Hoover regularly had a regard for the climate of times. I think the programs which had been carried on before were in periods during which the circumstances were entirely different than the period that existed at the time he ordered the suspensions.

Mr. SCHWARZ. Is it accurate, however, that after Mr. Hoover ordered the suspensions, the FBI continued to obtain material from the CIA in connection with the CIA's New York project, and continued to add certain names whose mail they would like to obtain from the CIA?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. Now, throughout the period covered by the FBI's own programs and its receipt of material from the CIA programs, was the subject of legality of mail opening focused upon, to the best of your knowledge, based upon either your recollection or your review of the files?

Mr. WANNALL. Would you give me the time frame again, Mr. Schwarz?

Mr. SCHWARZ. Starting from the beginning, 1940, and running all the way up through the FBI's own program and until 1973, which was the time the CIA program was stopped.

Mr. WANNALL. From the review of material that I have recently made, there was a consideration of this in about 1951, as I recall.

Mr. SCHWARZ. And thereafter, from the material we have been able to obtain and which you have reviewed, there does not appear to have been such a consideration, except for Director Hoover's references in connection with the Huston plan. Is that right?

Mr. WANNALL. To the best of my knowledge, that is correct.

Mr. SCHWARZ. And we could not determine, could you, whether there was actually an opinion in 1951 or whether the subject was merely raised?

Mr. WANNALL. I think the subject was raised because as I recall, a particular document was prepared by one of the supervisors who was involved in the operations.

Mr. SCHWARZ. Thank you.

Now, Mr. Chairman, based upon the staff review of the FBI programs, it appears to the staff that in most cases the FBI programs did not involve the same kind of random or general opening of mails, but rather it involved the opening of mail which the FBI had reason to believe, in their opinion, was likely to lead to matters relating to illegal agents within the country. I think there are some exceptions to that, but, gentlemen, is that, in your judgment, a fair characterization of the FBI programs?

Mr. WANNALL. That is a very fair characterization.

Mr. SCHWARZ. However, Mr. Wannall, could I call your attention to the document which is exhibit 16,¹ the document dated March 11, 1960.

Mr. WANNALL. I have the document.

Mr. SCHWARZ. In support of the staff conclusions that I just mentioned, did the FBI have a review procedure of its mail-opening programs so that those programs which did not appear to yield results with respect to espionage matters were reviewed? And what happened when they were reviewed?

Mr. WANNALL. We had a procedure whereby starting, I think, about 1958, programs which were carried out within the division, not only relating to mail projects, but others, were reviewed on a semi-annual basis. I think later that became an annual basis, and then a review in conjunction with an annual inspection of our division by another division which conducts such inspections.

Mr. SCHWARZ. And were certain of the programs turned off, based upon such reviews?

Mr. BRANIGAN. That is correct, Mr. Counsel, certain of our programs were turned off because of their unproductivity. That is correct.

Mr. SCHWARZ. Now, one further background question. None of these programs was based upon the obtaining of warrants. That is true, is it not?

¹ See p. 228.

Mr. BRANIGAN. That is correct.

Mr. SCHWARZ. The document, Mr. Wannall, concerns a program involving an Asian country of which you were personally aware, does it not?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. I would like to read into the record from the document, in the third paragraph, an example of what the person writing the document was claiming to be the advantages of a particular program. And it reads as follows:

A true picture of life in that country today is also related by the information which this source—

Now, when he says "this source," he means the mail-opening program, does he not?

Mr. WANNALL. We're talking about the mail-opening program by use of the word "source," yes.

Mr. SCHWARZ. [reading].

A true picture of life in that country today is also related by the information which this source furnishes, showing life in general to be horrible due to the complete lack of proper food, housing, clothes, equipment, and the complete disregard of a human person's individual rights.

Now, none of that had anything to do with espionage, did it?

Mr. WANNALL. No; I would say that that was developed as positive intelligence, a byproduct of the program.

Mr. SCHWARZ. And you agree that the FBI does not have the responsibility for developing positive foreign intelligence?

Mr. WANNALL. We have no charter to develop positive foreign intelligence. As a member of the intelligence community, of course, we can be called upon by others to develop it. And should we come into possession of it, we do have a responsibility to see that it gets in the proper hands.

Mr. SCHWARZ. All right. Now, based upon your review of the material and your previous deposition, given the generality that the objective was to look for espionage matters, you agree, do you not, that the review of the files demonstrates that material was picked up concerning antiwar groups, concerning pornography, concerning several other matters which do not relate to the initial purpose; that is, to search for information relating to espionage matters?

Mr. WANNALL. We did secure such information as a result of this or other programs.

Mr. SCHWARZ. All right. Let us put aside the question of the legality of the program in the first instance and the fact that there was no warrant, and let us assume that there had been some statute or other authority to permit the FBI to look for information with regard to espionage matters. The fact is, of course, that other information did come to the attention of the FBI, such as antiwar movement matters, and that that other information was filed and used by the FBI in the course of its intelligence operations. Do you agree with that?

Mr. WANNALL. Yes sir.

Mr. SCHWARZ. All right. Now, as I say, passing the question of propriety in the first instance, and assuming there was some proper basis, do you not agree that it is improper to pass beyond that initial purpose, to retain and use materials such as material on antiwar demonstrators that had no relationship to the initial espionage purpose?

Mr. WANNALL. Well, at this time, just sitting here and analyzing it, it certainly could be concluded in that sense, Mr. Schwarz. However, I think it would be well to consider that as far as the product of this program was concerned, it was considered as having come from a source for which approval for its establishment had been granted on a high level, within the FBI at least. And the men who were producing the information did have a responsibility in their minds at that time to see that intelligence information was put in the proper channels.

Mr. SCHWARZ. This is not a problem limited to mail, is it? When you have a wiretap, assuming, it is a wiretap legally implemented for a purpose of discovering a certain crime, you may also get information that is unrelated to that, and your current practice is to retain the unrelated information. And my last comment, Mr. Chairman, is that this is an issue which we are going to have to deal with in the general sense as to what the proper standard should be. And perhaps somebody else is going to want to pursue that issue here and later when the Attorney General testifies.

Senator HUDDLESTON [presiding]. Mr. Kirbow, do you have any questions?

Mr. KIRBOW. Mr. Chairman, may I defer my questions until you have finished?

Senator HUDDLESTON. On the very point that counsel was discussing, how long do you retain this information and material?

Mr. WANNALL. Under rules that have been prescribed by the Archivist of the United States, we retain the material indefinitely if it has some bearing on the historical development of the country or something of that nature. I think there are rules with regard to destruction of certain categories of material. I would defer to Mr. Mintz. I think he may have a better concept of the legalities of the problem and what we are permitted to retain or not, if you want to have that.

Senator HUDDLESTON. Yes, I would.

Mr. MINTZ. The information is retained indefinitely, as he indicated. There are rules specified for our records destruction program that generally require destruction only after about 20 years of retention if the material is no longer of any value, but the broad scope of the information is retained indefinitely in this area.

Senator HUDDLESTON. How could information collected in this fashion that might be totally unrelated to the mission, but might be derogatory to some citizen, be of any value, or be necessary to retain for 20 years in your files? The revelation of this information might be very damaging to somebody, but very untruthful. Why would you keep it laying around for 20 years with the vulnerability it might carry?

Mr. MINTZ. I suppose the answer to that is historically it was a practice in the Bureau to retain information for its potential value. I suppose the greater point to your question is the possible abuse of that information. I think that it is very difficult to justify any abuses of such information. I am not sure we have any record of that having been done. But the material collected was retained.

Senator HUDDLESTON. On another matter, Mr. Wannall, or Mr. Branigan, who specifically authorized the mail opening? We will start at the beginning with respect to the mail cover project in New York City.

Mr. BRANIGAN. Senator, are you referring to the CIA project?

Senator HUDDLESTON. I am referring first to the projects of the FBI.

Mr. BRANIGAN. Our first project, which dates back prior to World War II—we have no record as to who authorized this. This was a very closely confined survey. To describe it for you, I might use the term I called a "traitor's trap." It was a program designed to detect persons—and there are such—within the United States who would be willing to sell information to a foreign power.

Our second survey that we talked about which initiated in New York City, since you referred to that, was initially approved at a level of our Assistant Director. However, within a very short time after that was approved, it was specifically approved by Mr. Hoover himself.

Senator HUDDLESTON. Who approved the extension of that program from a simple mail cover to a mail opening?

Mr. BRANIGAN. You are referring to our second program?

Senator HUDDLESTON. Your second program.

Mr. BRANIGAN. This was never what we could consider a strictly mail cover project. This was a program designed to detect the illegal agents operating in the United States, and I think we have explained the difficulty of finding persons who come to this country who are swept up in the mainstream of American life, and who are here for the purpose of staying behind in the event of hostilities, who are here for the purpose of carrying on espionage. It is a very difficult thing.

The program was founded on firm indicators as to the manner in which these persons would prepare correspondence, and these included not only indicators with respect to the envelopes, the covers for these things, but the correspondence itself, so it was never a strictly mail cover operation.

Senator HUDDLESTON. You had mail intercept programs in other cities in addition to New York, is that correct?

Mr. BRANIGAN. That is correct, Mr. Senator.

Senator HUDDLESTON. Who approved the establishment of these operations?

Mr. BRANIGAN. I think, for the most part, these—certain of them, certainly would have been approved by Mr. Hoover.

Senator HUDDLESTON. Did they come through your office specifically?

Mr. BRANIGAN. That is correct. Any proposal to extend one of these things would have initiated, perhaps, with our field office, writing in and saying, "here, we think we could do ourselves and the country some good if we got into this area," and then the supervisor who works for me would prepare in the form of a memorandum or a communication, and it would come in to me and I would prepare it, and from there I would probably send it on up the line.

Senator HUDDLESTON. You probably would send it up the line, but would it be put into operation with your approval at that point? Would that go any further?

Mr. BRANIGAN. No, sir. I don't think that I signed off on any of those particular programs.

Senator HUDDLESTON. How much authority did the agent in the field have to initiate such a program on his own?

Mr. BRANIGAN. Under my understanding—and I have been in the FBI for 34 years. I worked for a good many of those under Mr. Hoover. I have to say, Senator, that the agent in the FBI really didn't

have that much authority. The fact of the matter is that I guess we have human beings that work for the FBI and, if a man took it upon himself, if he was particularly aggressive, if he thought there was something, he might have assumed that authority, and we have had programs which we know were initiated in the field office without—but there again, I mean the system isn't all that imperfect because once you start one of these programs you have the duty to report. You want to report the results, or else it is no good, and so in reporting the results quite obviously the people back here at headquarters are going to say, "oh, what is this? Here is something new." And they will raise a question about it.

Senator HUDDLESTON. Once a program was initiated, how strict were the guidelines received from your level by the agents who were operating the program in the field?

Mr. BRANIGAN. Well, the actual guidelines, the indicators, as I say, in our programs were not specifically laid out from the headquarters level. Rather, they were conveyed to our agents in the field, probably all of whom had direct experience in counterespionage, counterintelligence matters, through their superiors in the field. Sure, we had the guidelines back here, and they were outlined, and the field was well aware of these.

Senator HUDDLESTON. Is this just another case where these instructions may have gone down verbally, and where there might be a great deal of room for misunderstanding?

Mr. BRANIGAN. I don't really think there could be any room for misunderstanding, Senator. The guidelines for locating—and I am referring to the specific programs here—for locating the indicators were known to these people. There is no question about it, and I don't really think there could be any. Now, the question that you ultimately are coming to, Senator, is, were these guidelines expanded so that we weren't really coming up with illegal agents? We weren't really—we always focused on the illegal agent, believe me. I am convinced of that, but if, as Mr. Wannall has indicated, there is a by-product that came there and some particular agent was aware that in this particular field we had another investigative interest, I am not saying that that didn't occur.

Senator HUDDLESTON. Thank you.

Senator SCHWEIKER, do you have any questions?

Senator SCHWEIKER. Thank you, Mr. Chairman. Mr. Branigan, was all of the mail which was opened going to and from a foreign country, or did some of the mail which was opened include purely domestic mail traveling from one point in this country to another?

Mr. BRANIGAN. In one of our programs it did include domestic mail, mail within the country to another location in the country. It was strictly domestic. Now, let me hasten to add to that, that particular survey that we had was again based on firm indicators as to how an illegal agent would prepare his mail, and we do know, and we had experience, that illegal agents operating in the United States received correspondence from their support officers, if you want to call them that, their principals, who were themselves in the United States, and this was why we were directing this particular thing, Senator.

Senator SCHWEIKER. Did the FBI ever ask the CIA to open letters during the project that dealt with Government employees? In other

words, did you have a request to the CIA to see the mail of Government employees?

Mr. BRANIGAN. That is correct. In connection with the particular project you are referring to, we furnished to the CIA categories of correspondence that we would be particularly interested in, and I think if you would read our particular category where we were talking about the Government employees, the next sentence, the next part of that sentence specified, "or other persons in sensitive industry." And, what we were focusing on is not a Government employee who just wouldn't have any—we were focusing on a Government employee who would have access to highly restricted, highly classified information, who would be in a position in correspondence with persons abroad who might be, himself, the subject of some kind of pressure tactics by another, a hostile service, based maybe on the hostage situation, I don't know, but this is really what we were focusing on, not just the words "Government employee" but one who was in a position to do damage.

Senator SCHWEIKER. Would that have included elected officials or not?

Mr. BRANIGAN. If you, Senator, say that the FBI focuses on elected officials; in my career, no. We don't focus on elected officials, but if an elected official, who was in a position where he had access again to really sensitive information, it might be desirable, from a counterintelligence standpoint, really sensitive, that we would know, well, yes.

Senator HUDDLESTON. Such as members of this committee?

Mr. BRANIGAN. No, sir. No, sir.

Senator SCHWEIKER. Mr. Wannall, how were names added to the list? In other words, once a procedure was set up, once you had an objective that you cited, how were new names added and who made that recommendation or decision?

Mr. WANNALL. In which project, Senator?

Senator SCHWEIKER. In any projects. What procedures were followed, say, for adding names once a project was set up to do a certain thing? You obviously may have had new names come into the category.

Mr. WANNALL. Well, of the eight FBI projects, I don't recall any where we had a list of names, as such. There were three operations wherein agents had access to some 16—I think 13,000 pieces of correspondence within 2 hours, and I am told that they maintained in their head names because of their expertise in the particular area, but they didn't take a list and didn't have time to check that list in a 2-hour period against so many thousands of pieces of communications. Now, this is in our own operations that I am discussing.

Senator SCHWEIKER. Let me get more specific. I understood that in a case in San Francisco, there were some names that were added through the field office, which were not reviewed at a higher level. How did this happen?

Mr. WANNALL. I found a reference in material I have reviewed to the fact that one of our offices would furnish to San Francisco a list of names. Following that, we went to our San Francisco office and asked them to go through all of their material to discuss with agents who may have been working there during the time this particular survey or the surveys were being conducted, and the response we got back was that there was no list, as such, which was used to pull out pieces of

mail, that because of the time element, 13,000 pieces of mail in 2 hours, the agents couldn't retain in their minds individuals.

It is quite possible that names were furnished to the San Francisco office so that the agents would keep these in mind, but they found no indication that a list was compiled, as such, and utilized in screening the mail.

Senator SCHWEIKER. Mr. Moore, you were knowledgeable about the CIA's mail-opening project and, of course, the FBI received a "take" from that project. Why didn't you inform the CIA of the FBI mail-opening programs, given the fact that perhaps they would have derived some benefit from them?

Mr. MOORE. Back in 1958 when they first advised us, as I understand it, of theirs, Senator, our programs were very tightly held, even within the Bureau. I would not have advised any other, CIA or anyone else, without approval. Subsequently—I believe it was 1961—I did advise CIA.

Senator SCHWEIKER. Did you have any discussion at all about mail openings, Mr. Moore, with Post Office officials or with the Attorney General?

Mr. MOORE. Senator, with regard to Post Office officials, you used the words "mail openings." I discussed with Post Office officials on some occasions our mail programs in which we received mail from the Post Office delivered to our custody. I did not advise them that that mail was subsequently opened.

I also personally had one discussion with an Attorney General at one time with regard to our mail intercept program. To the best of my knowledge, the words "mail openings" were not included in the discussion.

Senator SCHWEIKER. Which Attorney General was that?

Mr. MOORE. That was Mr. Katzenbach.

Senator SCHWEIKER. To the best of your knowledge, you did not discuss mail opening?

Mr. MOORE. To the best of my knowledge, Senator, a question came up in which the furnishing of mail by the Post Office to the FBI was raised. I discussed that, along with other people, with one other representative of the FBI, with Mr. Katzenbach and another representative of the Department of Justice, but I cannot say that the words "mail openings" were utilized.

Senator SCHWEIKER. Mr. Mintz, do the present procedures of the Bureau require your review and approval for proposed programs where the legality of an operation or procedure might be in doubt?

Mr. MINTZ. They do.

Senator SCHWEIKER. Do the present procedures of the Bureau provide any machinery for you to be informed of programs that might have been started some time back and, therefore, wouldn't immediately come to your attention? I am referring to programs that may be ongoing, and because they were started prior to you or another official's administrative beginning, they would not come before you for review.

Mr. MINTZ. I cannot say that they do.

Senator SCHWEIKER. Can you give any suggestion or consideration as to how we might spot some of these situations that still might be ongoing, but might be rooted out, just as mail opening was?

Mr. MINTZ. I suppose the best way is to inquire of the investigative divisions of the Bureau as to their activities.

Senator SCHWEIKER. Do you regularly receive reports of internal inspections? I mean by that the investigating division you were talking about.

Mr. MINTZ. I do not.

Senator SCHWEIKER. Who sees that?

Mr. MINTZ. The Inspection Division prepares them and submits them to the Director.

Senator SCHWEIKER. Would they relate to items of questionable legality or not?

Mr. MINTZ. That is a very broad question, Senator. I cannot tell you. I have not reviewed them myself. I do not know.

Senator SCHWEIKER. Mr. Wannall, why did the FBI, in your opinion, neglect to get the Attorney General's approval for mail opening? Can you shed any light or give any insight to this committee that might be useful in preparing new legislation?

Mr. WANNALL. Senator Schweiker, it would be difficult for me to try to advise you now why back in the early stages of these programs there was no consultation with the Attorney General. I was not privy to any of the discussions at the time. I don't even know if the question came up, so to answer that part of your two-part question, I would say it would be difficult for me to offer an opinion to you as to why someone at that time did not do or follow that procedure.

Senator SCHWEIKER. I just thought you might have heard some discussion or had some insight. I would certainly think it must have crossed a lot of the minds of those who were dealing with this problem.

Mr. WANNALL. Well, I am aware, as I indicated earlier in response to a question of Mr. Schwarz, that in 1951 the question was addressed in a memorandum. It was some 5 years after that, to the best of my knowledge, that there was another program introduced which concerned the interception of mail. In the interim I have found no indications of any further discussion of the problem, no record of any such discussions, and neither have I heard in connection with my discussing this particular matter recently with others, of any considerations that were given to going to the Attorney General prior to the institution of the procedures.

Senator SCHWEIKER. That is all, Mr. Chairman. Thank you.

Senator HUDDLESTON. Thank you, Senator. Senator Hart.

Senator HART of Colorado. Thank you. Gentlemen, I don't know to whom this question should be directed, but it is my understanding that during the 25 or so years that the FBI conducted its own mail-opening projects and cooperated with the CIA in its project, that no Attorney General was aware of either of these projects. Is that the case?

Mr. WANNALL. I would say that as projects, I have no knowledge that any Attorney General was aware of it. I do have information which I have secured as a result of a review of material available at our headquarters at this time that in at least two cases the fact that mail had been intercepted was made known to departmental officials. I do not know if the Attorney General himself became aware of this in those two instances.

Senator HART of Colorado. But to your knowledge, there was no effort by Mr. Hoover or by any of you to make any Attorney General aware of this?

Mr. WANNALL. I have no personal knowledge in that area. Certainly not as far as I, myself, am concerned.

Senator HART of Colorado. Just so the record is clear, in case it is not already, why was this done?

Mr. WANNALL. Well, I am in the same position as I was in trying to advise you with respect to something to which I was not privy. I do not know why it was not done, Senator.

Senator HART of Colorado. Do you think it should have been done?

Mr. WANNALL. In retrospect, I would say yes, and I would think that the procedures which have been established by the present Attorney General are such that it certainly would be done at the present time.

Senator HART of Colorado. It is my understanding that the FBI presently is not opening mail at all. Is that correct?

Mr. WANNALL. That is correct.

Senator HART of Colorado. What prohibition is there to prevent the resumption of mail openings?

Mr. WANNALL. Instructions have been issued, Senator Hart. Mr. Branigan addressed himself to the problem of accounting for the activities of every single agent. I know the agent would realize that should he engage in any such project or even a single undertaking, he would be subject to very severe disciplinary action.

Also, as Mr. Branigan indicated, should he engage in such a project or an individual action, he would have to account for it because he would have information he could not utilize without reporting it to headquarters. So, I would say that the necessary instructions are out, and procedures for implementing those instructions are as tight as they can be.

Senator HART of Colorado. Are the instructions to which you refer in the memorandum [exhibit 17¹] to all special agents in charge, from the Director, dated December 5, 1973?

Mr. WANNALL. I would say that is a broad instruction which covers conduct of employees, and certainly, in my opinion, mail opening would be within the framework of those instructions that were issued at that time.

Senator HART of Colorado. The key phrase of your response is, "in my opinion." Has that general prohibition which the Director issued ever been made more specific as to actual areas of conduct, including mail openings, or is it just a broad blanket prohibition?

Mr. WANNALL. With respect to mail openings, of course, Mr. Hoover issued specific instructions in July 1966 there should be no more such mail openings, and I have no knowledge that those instructions have in any way been violated.

Senator HART of Colorado. So, in your judgment, and in the judgment of those throughout the Bureau, that blanket absolute prohibition is still in operation?

Mr. WANNALL. Yes, sir.

Senator HART of Colorado. Mr. Mintz, I would like to pursue a line of questioning that we got into in executive session that involves the whole area of illegal procedures or mail openings. It is my understanding of the law, according to the interpretation of the Constitution, statutes, Supreme Court case law, and so forth, that it is illegal for anyone to open the mail without a judicial warrant. Is that correct?

¹ See p. 232.

Mr. MINTZ. That is a general statement that I would subscribe to in regard to criminal cases, Senator Hart.

Senator HART of Colorado. Yes. It is also my understanding—correct me if I am wrong—that the state of the law with regard to wiretapping is that such wiretaps can be conducted with a judicial warrant. Is that correct?

Mr. MINTZ. That is correct, but also I must add that in regard to wiretapping, in regard to criminal cases, without a warrant it is, of course, a violation, but in title III there is recognition of Presidential authority, whatever it may be. I suggest, as they mention in criminal cases, with regard to mail openings, there may be that same authority. I do not claim that there is, but there may well be that same authority, so that the opening of mail may well be authorized by the constitutional power of the President in certain instances, and it would not, therefore, be a violation of the law.

Senator HART of Colorado. I assume it is not the policy of the Bureau to seek judicial warrants to open mail at the present time?

Mr. MINTZ. Oh, yes, we do in criminal cases.

Senator HART of Colorado. Well, criminal includes espionage cases.

Mr. MINTZ. If the espionage case is one that would lend itself to prosecution, and the discovery of the information that would be filed in the affidavit—as it would be discovered through publicity—would be appropriate, then we would get a warrant.

Senator HART of Colorado. And have you done this in the past?

Mr. MINTZ. I am sure that we have.

Senator HART of Colorado. Would you explain the problems of publicity surrounding warrants and why this is a difficult area?

Mr. MINTZ. Yes. In the intelligence business, some of the objectives are not prosecutorial. Some of them are just simply to collect intelligence data that would be useful to protect this country against international attack or to aid in our foreign intelligence information capacity, and so, the filing of an affidavit, which would require the specification of the facts sufficient to show probable cause, as required by the fourth amendment, would lay out our side of the case and would give more information than we would get in a particular situation. So, it is relatively impossible now to use the warrant procedure in security matter cases.

Senator HART of Colorado. In our executive session, counsel brought out the fact that affidavits stating probable cause can be delivered to the court under seal. Now, why doesn't that procedure work?

Mr. MINTZ. That is correct. They can be sealed. They can be sealed fairly indefinitely. However, some of these cases are of continuing interest and may well go on for many years. I am not sure the court would accept at this time and under the present state of the law our request to seal an affidavit permanently.

Senator HART of Colorado. Have you ever tried?

Mr. MINTZ. Not to my knowledge.

Senator HART of Colorado. That is all the questions I have.

Senator HUDDLESTON. Mr. Wannall, I find it curious that the question of the legality of this mail operation came up in 1951 and, yet, after operating for over 20 years, it was apparently never resolved at the highest level. The Attorney General was never really called upon to give guidance to either the FBI or the CIA as to whether or

not they were within the legal requirements. Was this something that was done on purpose?

Mr. WANNALL. Senator, I cannot tell you without reservation that somewhere there was no discussion with an Attorney General. I just do not have that knowledge. I have no knowledge that there was a discussion from the material I have seen. I have no knowledge there was a discussion with any other official outside of the FBI.

As Mr. Branigan indicated, much of this from an operational standpoint was highly compartmentalized, and there were things that were not put down in writing, I think, because of the sensitive nature of the operations and protecting them on a need-to-know basis, so I don't have any knowledge which I have been able to glean as a result of review of material or discussions with people that there were discussions with the Attorney General.

Senator HUDDLESTON. The record shows there were individuals within the FBI, the CIA and the Postal Department that felt serious reservations about the program, and at least suggested its legality ought to be resolved, and yet they never really were up until this date, I suppose. Do you know of any instance where the type of material or evidence gathered through this operation had any direct effect on the prosecution by the Justice Department in a case of espionage or any other serious offense?

Mr. WANNALL. I know of no cases where any of the evidence gathered through this source or these sources was utilized, and I rather doubt that that situation could come about. We did have two cases that were presented to the Department, and acknowledged that there were intercepts, and prosecution was declined on that basis. The results that we would retain in our files would be there in the event that prosecution should be considered, and prior to undertaking prosecutive steps the Department of Justice certainly would have access to everything in our files and the sources of that information.

So I don't know of any cases where there has been prosecution in which material from this source has been utilized.

Senator HUDDLESTON. Mr. Kirbow, do you have any questions?

Mr. KIRBOW. Thank you, Mr. Chairman.

Mr. Chairman, in agreement between Mr. Schwarz and myself, I think the record should show that he has exercised his judgment to disqualify himself from the examination of these witnesses on the question of authority, especially as they relate to former Attorney General Katzenbach, because of a previous attorney-client relationship between himself and Attorney General Katzenbach, and I therefore will pursue that line of questioning.

I would like to inquire into exhibits 18 through 21, please. Directing your attention to exhibit 18,¹ Mr. Moore, and the first document, dated October 2, 1964, is that a memorandum you prepared and forwarded to Mr. Sullivan?

Mr. MOORE. Yes, it is.

Mr. KIRBOW. It appears in that particular memorandum, so that the record might be made, that a discussion was underway within the Department concerning the prosecution of two persons from the Eastern District Court of New York on some very serious charges. Is that a true representation of what it basically says?

¹ See p. 233.

Mr. MOORE. Yes, it is.

Mr. KIRBOW. And to the last sentence in the third paragraph, of the first page, it states:

No information obtained from wiretaps or microphones is contemplated to be used in this case and the only tainted source is a mail intercept which did not take place anywhere near the residence.

Now, since the record shows that mail cover throughout all of this period of time was a legally authorized matter, and that you could photograph the outsides, you must have been talking about something other than mail cover when you talked about the evidence that had been obtained and which couldn't be used; it had to be from some other source. Is that correct?

Mr. MOORE. Yes. Mail cover and mail intercept, to me, are two different things.

Mr. KIRBOW. All right. In this case here, you are clearly talking about some information that had been obtained from opening the mail?

Mr. MOORE. Yes. That is what I was talking about, and that is what it means to me.

Mr. KIRBOW. Now, at that time, the Acting Attorney General was Nicholas Katzenbach, as shown on the next page; is that correct?

Mr. MOORE. I actually was not aware of that, who was the Attorney General.

Mr. KIRBOW. May I direct your attention to the second page, the first full paragraph, where it states that Hall advised he had discussed this case with Acting Attorney General Katzenbach and Katzenbach was of the opinion that the Department must be candid with the judge.

Mr. MOORE. Yes.

Mr. KIRBOW. Apparently Mr. Katzenbach had had a full briefing of this case and the tainted evidence from someone. Could you tell us who that was?

Mr. MOORE. Sir, I discussed this matter with Mr. Yeagley. And I do want to make it clear in my own mind—

Mr. KIRBOW. Who was Mr. Yeagley at that time?

Mr. MOORE. Mr. Yeagley was an Assistant Attorney General in charge of the Internal Security Division, and I do want to make it clear—I used the words "mail intercept." Once again, I was asked by Senator Schweiker if I used the words "opening mail."

Mr. KIRBOW. Could there be any doubt in the man's mind if you were talking about the product that you had received from some kind of mail program, that you were talking about something that you had opened and received, or at least a postcard which you had taken from the mails and had as evidence in this case, because you would have had to have the original document, wouldn't you?

Mr. MOORE. Sir, in my mind, I would have no question, but I cannot say, and I do not want to say, what Mr. Yeagley had in his mind.

Mr. KIRBOW. How could it have been tainted evidence, really, Mr. Moore, unless it was illegally obtained?

Mr. MOORE. Well, obviously there was a taint, because as it says, this was a tainted source. As I recall, the information itself, the information was not contained in the intercept, but there was something developed thereafter.

Mr. KIRBOW. And this was a very important case to the Department of Justice, because it involved two people who had committed some very serious offenses under the law; is that correct?

Mr. MOORE. Yes; there was an espionage charge.

Mr. KIRBOW. And was the prosecution later dropped, because of this tainted evidence and the inability to use it?

Mr. MOORE. The decision was made to drop the case, and it is my understanding it was based on this.

Mr. KIRBOW. Were you trying to convey in your use of the word "intercept" the true state of events of then-Assistant Attorney General Yeagley, without using the words "opening mail"?

Mr. MOORE. I was, yes. But I also—I have talked to various people since, and apparently the term "mail intercept" does mean the same thing to all people.

Mr. KIRBOW. You shouldn't feel bad, Mr. Moore. These are the same types of things we have heard for the past 6 months on other subjects. However, let me ask you who you were talking to about other mail intercepts that would give you that kind of feeling, or is this just a general feeling of yours from experience?

Mr. MOORE. Well, sir, one, I listened to testimony this morning which talked about communication. But also, in talking to a member of the staff of this committee, the question came up, what do I mean by mail cover.

Mr. KIRBOW. Did you have any conversation directly with Mr. Katzenbach about this particular case?

Mr. MOORE. Not about the Baltch case, none that I recall.

Mr. KIRBOW. Did you at any time have any conversation with him about your mail programs?

Mr. MOORE. Yes. At one time, subsequently, I had a discussion with him involving mail.

Mr. KIRBOW. From previous testimony in executive session, it is obvious from the record that this was considered to be a very important aspect of the CI program within the Bureau; is that correct?

Mr. MOORE. That is correct.

Mr. KIRBOW. And you certainly wanted to preserve it as a source at practically any cost.

Mr. MOORE. Yes. We thought it was valuable.

Mr. KIRBOW. Under those circumstances, can you tell us why you didn't mention the importance of this issue to the Attorney General and that you were, in fact, opening mail, so that he could try to get you some law, or something to carry this out legally?

Mr. MOORE. Sir, I cannot. I think the importance of the matter was stressed with the Attorney General. I don't believe there was any question about the importance.

Mr. KIRBOW. How could you do that, without talking about the product that you received, which meant opening the mail?

Mr. MOORE. Well, I think—as I recall, and from the memorandum I have been shown, I believe that it was recognized that we felt that the information was important.

Now, I cannot go over in my mind—and I certainly do not want to say that Mr. Katzenbach was involved in this if I don't recall, and I don't recall specific words. My impression was that there was no doubt in his mind that he thought the operation was valuable and that efforts should be made to see that nothing would happen which would cause it to be discontinued.

Mr. KIRBOW. Would you please direct your attention now to exhibit 19,¹ gentlemen, a memorandum dated February 27, 1965, from A. H.

¹ See p. 235.

Belmont to Mr. Tolson concerning the Long committee, meaning the committee in the Senate that at that time was chaired by the Senator from Louisiana. Would you tell us who Mr. Belmont and Mr. Tolson were, just to lay the groundwork?

Mr. MOORE. Yes. Mr. Belmont was the Assistant to the Director, who was in charge of all investigative divisions. Mr. Tolson was his immediate superior, who was Associate Director to Mr. Hoover.

Mr. KIRBOW. Were both of these gentlemen witting of the fact that the Bureau was, or had been, engaged in mail opening programs?

Mr. MOORE. Yes.

Mr. KIRBOW. Were they aware that you were still engaged in such a program, albeit piggyback, with the CIA?

Mr. MOORE. Yes. But, sir, the Bureau had programs apart, at this time, 1965.

Mr. KIRBOW. You still had your own programs?

Mr. MOORE. The Bureau had programs of its own.

Mr. KIRBOW. Yes. I understand that.

Look at page 2, if you will please, the first full paragraph, which starts:

I told Mr. Katzenbach that I certainly agree that this matter should be controlled at the committee level but that I felt that pressure would have to be applied so that the personal interests of Senator Long became involved rather than on any ideological basis. Mr. Katzenbach said that he had already talked to Vice President Humphrey about Fensterwald.

Who is Fensterwald?

Mr. MOORE. As I recall, he was staff counsel, or at least a staff employee, of the Long—I believe it was a subcommittee, if I recall correctly.

Mr. KIRBOW. And at that time, hadn't Mr. Fensterwald informed the Bureau that he was in touch with certain of their agents who were going to testify under oath, or asked to testify under oath, concerning mail-opening programs?

Mr. MOORE. I didn't recall that, although I saw it this morning. I don't know whether it was in this document or some of the documents that I was shown this morning. I didn't recall that at the time.

Mr. KIRBOW. Yes. It is in this document, and for reasons which we should not discuss here, it does not appear. It has been blanked out.

If Mr. Katzenbach was so deeply involved that he was dealing with the Office of the Vice President, with the Vice President himself asking him to intercede on your behalf, can you tell us that he did this without being fully briefed on what he was going to talk about?

Mr. MOORE. Well, in fairness to Mr. Katzenbach, I don't know—I don't know even other than these words here in the memorandum, I really don't know what he talked to Vice President Humphrey about.

Mr. KIRBOW. You know what the problem was before the Long Committee?

Mr. MOORE. I know what the problem was that concerned us; yes.

Mr. KIRBOW. It concerned your mail-opening program, and the national security aspects thereof.

Mr. MOORE. Very definitely.

Mr. KIRBOW. There was severe concern at all levels of the Bureau about it being exposed publicly.

Mr. MOORE. Yes.

Mr. KIRBOW. In fact, there were comments in here about Senator Long's zest for publicity on this matter at some time, wasn't there? Wasn't that one of your concerns?

Mr. MOORE. Our concern was—and if you will allow me to say that our concern originally arose with regard to some testimony—

Mr. KIRBOW. Yes, on the part of a person who had the very highest reasons for doing what he had done with you, and occupied the Chief Inspector's position in the Department, I believe.

Mr. MOORE. That is correct.

Mr. KIRBOW. He was an official in the Post Office Department, and he had been forced to give bad testimony to protect this source, because of his cooperation with you.

Mr. MOORE. He had made an answer which he thought was correct under the circumstances, and he had wanted to bring, as I understand, this matter to the attention of the Attorney General, to make certain that the matter was handled correctly.

Mr. KIRBOW. That is the very point that I wanted to get to with these other questions, Mr. Moore. The inspector who there testified before the Long committee has here testified that he did not know, in fact, that the mail was being opened, and he said that thinking it to be the truth.

Mr. MOORE. That is not the way, as I understand it, or the way I was told of it. The question was, "Does the mail leave the custody of the Post Office?"

Mr. KIRBOW. Which was in fact a violation of the law at that time, as it is today.

Mr. MOORE. I accept your statement.

Mr. KIRBOW. I don't really want to make that judgment. It is a question. It was an illegal act, was it not, to take the mail from a Post Office to a separate place to do anything with it that was not authorized by the postal laws, by anyone other than a postal inspector or an employee?

Mr. MOORE. I am not sure, but I believe that was probably so.

Mr. KIRBOW. Thank you.

Would you then direct your attention to exhibit 20,¹ memorandum dated March 2, 1965, for Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and De Loach. In that first paragraph, we come back to the subject you discussed a moment ago, where the sentence starts—

The Attorney General stated that Mr. Fensterwald was present for part of the meeting.

This is a meeting between the Attorney General and Senator Long, apparently—

and Fensterwald had said that he had some possible witnesses who were former FBI agents, and if they were asked if mail was opened, they would take the fifth amendment.

Do you see that part of it?

Mr. MOORE. Yes.

Mr. KIRBOW. Do you know who had briefed the Attorney General before this particular meeting with Senator Long?

Mr. MOORE. Well, this, as I am reflecting, the memorandum from Mr. Belmont is dated February 27 [exhibit 19²], and the memorandum from Mr. Hoover is dated March 2 [exhibit 20], so I presume the

¹ See p. 238.

² See p. 235.

Attorney General is advising Mr. Hoover subsequent to the meeting that Mr. Belmont and I attended with Mr. Katzenbach.

Mr. KIRBOW. Actually, the memorandum is signed, or appears to be a memorandum from John Edgar Hoover, the Director.

Mr. MOORE. Yes.

Mr. KIRBOW. Thank you. Looking at the second full paragraph which starts—

The Attorney General stated that the Postmaster General is going down there this morning himself,

apparently talking about the Long committee or to see Senator Long, which he, the Attorney General, thought would be helpful to Chief Inspector Montague of the Post Office Department.

At that time Mr. Gronouski was the Postmaster General of the United States. Do you recall anything about the Attorney General involving Mr. Gronouski in this matter with the Long committee?

Mr. MOORE. I do not. I do not recall this memorandum although, as I say, I am sure I saw it.

Mr. KIRBOW. I see. I will ask the other witnesses a collective question, and any of you may answer if you choose.

Do any of you have any knowledge of your own as to any authority ever having been granted for such a mail-opening program at any level higher than that of the Director of the FBI or the Attorney General?

Mr. BRANIGAN. I have no knowledge.

Mr. WANNALL. I have none.

Mr. MINTZ. I have none.

Mr. KIRBOW. Mr. Chairman, I think that finishes my questions.

Senator HUDDLESTON. Mr. Schwarz.

Mr. SCHWARZ. I would like to continue with some questions on a matter other than that from which I have disqualified myself. In the same document, March 2, 1965 [exhibit 20¹], Mr. Hoover's memorandum, I will read into the record some comments he makes about wire-tapping by other Government agencies, and then I will have you gentlemen answer collectively as to whether you know anything about those matters.

This is Mr. Hoover's memorandum to all of his major associates about his conversation, so it is Mr. Hoover who is talking in the memorandum. Am I right in that?

Mr. WANNALL. That is correct.

Mr. SCHWARZ. All right, reading from page 2, the second line—

I stated that it is a fact, insofar as I am concerned, that I am the only head of an agency who does not have authority to tap telephones. I stated that I know that subordinates down the line in some agencies will tap phones without the knowledge of the chief of the agency and there is grave suspicion in Washington by some newspapermen that their phones have been tapped by agencies of the government, trying to find out where they are getting their information.

Stopping there for the moment, do any of you gentlemen have knowledge about any taps which Mr. Hoover indicates, or at least which he suspects, which were placed upon newspapermen to determine where they are getting their information. I'll start with you, Mr. Wannall.

Mr. WANNALL. I have no knowledge of what he meant by that statement.

¹ See p. 238.

Mr. SCHWARZ. Apart from what he meant, do you have knowledge that that occurred at any time?

Mr. WANNALL. I have no knowledge that that occurred with respect to any other agency. I know that in connection with investigations that were conducted by the FBI, there were newspapermen tapped, but I don't think that is relevant to the statement which you have asked me. Mr. Hoover was talking about his knowledge that other departments were—

there is grave suspicion in Washington by some newspapermen that their phone have been tapped by agencies of the government trying to find out where they are getting their information.

I have no knowledge that the FBI engaged in any such wiretaps, or any other agency.

Mr. SCHWARZ. You did say that you knew that the FBI had tapped phones of certain newspapermen. Did I understand you correctly?

Mr. WANNALL. No, I would say I have been aware of the information that has come out publicly with respect to the 17 wiretaps.

Mr. SCHWARZ. Is that the only such information that you have from your whole experience in the FBI?

Mr. WANNALL. That is all that I can recall. I cannot recall specifics in any other area. I think there may have been others, but I cannot call them to mind. It may go back some years.

Mr. SCHWARZ. Without regard to specifics, then, is it your understanding that there were other instances where there were warrantless wiretaps of newspaper men, but you do not recall the details of who was tapped and when?

Mr. WANNALL. Neither were they for the purpose of establishing the sources of their information.

Mr. SCHWARZ. What was your understanding of the purpose of wiretaps of newspaper persons?

Mr. WANNALL. In connection with an investigation which had been authorized, and wiretaps themselves would have been authorized.

Mr. SCHWARZ. But these were warrantless wiretaps authorized by an Attorney General?

Mr. WANNALL. I would say, prior to 1972, the Keith decision, yes, sir.

Mr. SCHWARZ. Yes; they were authorized by some Attorney General.

Mr. WANNALL. That is correct.

Mr. SCHWARZ. In what time period do you have in mind?

Mr. WANNALL. I go back at headquarters for some 28 years. This would be back in the late fifties, early sixties perhaps.

Mr. SCHWARZ. All right.

Mr. Branigan and Mr. Moore, with respect to the subject of tapping of phones of news persons, do you have any knowledge to add to the testimony which Mr. Wannall has given here, either with respect to the FBI or with respect to other governmental agencies?

Mr. BRANIGAN. I have no knowledge of any other agency who would be engaged in—that Mr. Hoover was referring to in this memorandum; and I have no knowledge of the FBI engaging in tapping the telephones of newspapermen.

Mr. SCHWARZ. Mr. Moore?

Mr. MOORE. I recall none, unless I read it in the Rockefeller Commission report. As far as other Government agencies are concerned,

I do know that there was phone tapping of newspapermen, but done with the permission and the authority of the Attorney General.

Mr. SCHWARZ. What period of time are you talking about with respect to the instance or instances that you have in mind?

Mr. MOORE. Would you like an exact year?

Mr. SCHWARZ. I would appreciate your best recollection as to the period of time.

Mr. MOORE. I can, I think, give you an exact year. It would be in the early sixties.

Mr. SCHWARZ. Do you have specifics in mind, Mr. Moore?

Mr. MOORE. Yes, and I think I am correct. It is purely recollection.

Mr. SCHWARZ. All right. What is your recollection?

Mr. MOORE. I don't know whether or not you would want to—I will defer to you, of course, but I wondered if you would like to explore this in open testimony.

Mr. SCHWARZ. Since this came up for the first time here, we will explore that first in executive session, and come back to it. Mr. Chairman, if you think that is appropriate.

Senator HUDDLESTON. I think that would be the correct way to proceed.

Mr. SCHWARZ. All right.

In the document Mr. Hoover states that he proposed to the Attorney General that a new procedure should be devised whereby an Attorney General would control all wiretaps. And then he goes on to say, "I stated many agencies are opposed, because they realize there would be a marked restriction. I stated we"—the FBI—"only have 46 phone taps, which is a low number for a country the size of ours and the area we have to cover. The Attorney General stated no one has any idea how many phone taps the whole Government has."

Now, my question is, which other agencies of the Government were engaging in wiretaps?

Mr. WANNALL. I have no knowledge in that regard.

Mr. SCHWARZ. Do any of the other gentlemen?

Mr. BRANIGAN. Nor do I.

Mr. MOORE. Mr. Counselor, I would like to clarify in connection with the other—

Mr. SCHWARZ. You wanted to make a correction, Mr. Moore?

Mr. MOORE. No, no correction. This was during an official investigation which had been requested of the FBI.

[Whereupon, at 1:10 p.m., the committee recessed, to reconvene at 2:30 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN [presiding]. The hearing will please come back to order.

In my absence during part of the hearing this morning, I am told by counsel that there was testimony as to a wiretapping incident that related to one or more newsmen. Senator Huddleston, who was then presiding, agreed that this information, being new to the committee, should first be heard in executive session according to the practice of the committee. The FBI is prepared to submit to the committee all relevant documents and information relating to the incident.

Am I correct in that understanding?

Mr. WANNALL. That is correct, Mr. Chairman.

The CHAIRMAN. And the committee will be furnished the documentary information as quickly as that can be arranged?

Mr. WANNALL. Yes, sir.

The CHAIRMAN. And we will have your cooperation?

Mr. WANNALL. Fully.

The CHAIRMAN. Very well.

Mr. Schwarz has a few concluding questions he would like to ask at this time.

Mr. SCHWARZ. All right. Over the lunch hour we were discussing the date of the memorandum from Mr. Hoover [exhibit 20¹] that we had been looking at just prior to adjournment and it was dated March 1965.

Among the matters raised in the document was a recommendation to the then—Attorney General that a change in procedure be instituted whereby no wiretaps could be instituted without the approval of an Attorney General. After that memorandum, was such a change made, and if so, by whom?

Mr. WANNALL. It is my recollection, Mr. Schwarz, that the President did issue an order to that effect. However, I do not know the precise date of the order. It is my recollection that it probably followed that within a matter of a few months.

Mr. SCHWARZ. And if that is so, there is a great likelihood there was a causal connection between the suggestion made here in the order of the President that followed.

Mr. WANNALL. I feel this could certainly have had some bearing on the order.

Mr. SCHWARZ. I have a few questions relating to the CIA program and the FBI's understanding of it. Will you turn to exhibit 22,² please. Mr. Branigan, Mr. Wannall, Mr. Moore, I think you all might be able to cast some light on this. This is a document dated March 10, 1961, and it is from you, Mr. Moore, to Mr. Belmont, relating to the CIA program and to the CIA's institution of a laboratory for the analysis of mail in New York. Did you send that memo, Mr. Moore?

Mr. MOORE. Yes, I did.

Mr. SCHWARZ. All right. Mr. Hoover writes at the bottom of the memo, in his handwriting, "another inroad!" What do you think that meant?

Mr. MOORE. Obviously, this has to be an interpretation, but I think it is correct. Mr. Hoover was quite jealous of the FBI's jurisdiction and I believe he felt that perhaps there might be an inroad by the CIA on the FBI's jurisdiction in this country. That is purely my interpretation. I think it is accurate.

Mr. SCHWARZ. And you do not think it means—and I agree with you it doesn't mean—an inroad into persons' liberties. It means an inroad into the turf of the FBI.

Mr. MOORE. That is my interpretation of it and I believe it is correct.

Mr. SCHWARZ. All right. Mr. Branigan, would you look at the document which is exhibit 23³? This is a document from someone

¹ See p. 238.

² See p. 244.

³ See p. 245.

else to you dated August 24, 1966, which purports to describe the kind of material you were receiving from the CIA; is that right?

Mr. BRANIGAN. That is correct.

Mr. SCHWARZ. Now, included among the material was, for example, data regarding current and former U.S. exchange students and their U.S. contacts before and after their return, including their romantic involvement. According to this document, you also got information about persons involved in the peace movements, anti-Vietnam demonstrations, women's organizations, teach-ins, racial matters, and so forth.

Did you get a lot of information from the CIA program that really had nothing to do with espionage or that kind of matter?

Mr. BRANIGAN. This is correct. We initially got into this program, Mr. Schwarz, with the idea of identifying Soviet or identifying illegal agents, identifying persons who would be active in behalf of the foreign power. After we had been into it for approximately—oh, I would say about 14 months—it became evident that a lot of the material we were getting related more to the domestic scene than it would to the foreign counterintelligence.

Mr. SCHWARZ. And a lot of it really was just plain junk, was it not?

Mr. BRANIGAN. We, at various times, went back to the Agency with the idea of giving the categories of information that we were interested in and to eliminate information that was of no pertinence to us.

Mr. SCHWARZ. You do not want to accept my word "junk," but information having no pertinence and junk are the same thing; are they not really?

Mr. BRANIGAN. Well, I will accept your word "junk."

Mr. SCHWARZ. OK. Over the course of the 15 years that you received information from the CIA program, the record shows you received some 50,000 copies of letters. Did it lead to the identification of a single illegal agent?

Mr. BRANIGAN. To my knowledge, no.

Mr. SCHWARZ. I have nothing further, Mr. Chairman.

The CHAIRMAN. You have the documents before you, Mr. Wannall, and I would ask you to turn to exhibit 24.¹

Mr. WANNALL. Yes, sir.

The CHAIRMAN. It is the fourth document here under date of May 25, 1965. It is directed to the Director of the FBI from the San Francisco office of the Bureau and it reads as follows: "As of May 26, 1965," which would be the following day, "contact with source will be temporarily suspended."

Now what does that mean? What does "source" mean here?

Mr. WANNALL. That would be the source which was providing mail intercepts.

The CHAIRMAN. Would that be the CIA source or the FBI source?

Mr. WANNALL. It was the FBI source.

The CHAIRMAN. This would be your own San Francisco operation?

Mr. WANNALL. Yes, sir.

The CHAIRMAN. Very well. So, the message reads "As of May 26, 1965, contact with source will be temporarily suspended in view of discontinuance of Post Office examination of first-class mail, originat-

¹ See p. 249.

ing as a result of the Supreme Court decision of May 24, 1965." And then it reads: "The Bureau will be promptly advised when arrangements have been perfected to recontact this source."

Now, the Supreme Court decision of May 24, 1965, which I have here before me, exhibit 25,¹ was a decision in which the Court held a statute that permitted the Post Office to detain and deliver only upon the addressee's request, unsealed foreign mailings of Communist political propaganda. And the Court held that the act, as construed and applied, is unconstitutional since it imposes on the addressee an affirmative obligation which amounts to an unconstitutional limitation of his rights under the first amendment.

A previous decision by Mr. Justice Holmes is quoted favorably in which Mr. Justice Holmes wrote: "The United States may give up the Post Office when it sees fit, but while it carries it on, the use of the mails is almost as much a part of free speech as the right to use our tongues."

And the Court further went on to say that the defense of the statute on the grounds that Communist governments gave no such rights to their own citizens was to be spurned, the Court holding that: "The governments which originate this propaganda themselves have no equivalent guarantee, only highlights the cherished values of our constitutional framework. It can never justify emulating the practice of restrictive regimes in the name of expediency."

So the Court had struck down this statute, and in this message to the Director, as I read it, the FBI program was temporarily terminated, and the message went on to say, "The Bureau will be promptly advised when arrangements have been perfected to recontact the source."

Now, on the next page is a document [exhibit 26²] which shows, as I read it, that the program was reinstated shortly thereafter. Is that correct?

Mr. WANNALL. I would certainly interpret the documents that way, Senator Church.

The CHAIRMAN. What was the justification for reinstating the program after it was terminated in light of the Supreme Court decision?

Mr. WANNALL. I think the Supreme Court decision—I cannot justify this, Senator Church, and I might say that at the time I was not involved in the program, but I would like to make the point that as I recall the Supreme Court decision and as you have refreshed my recollection of it, and which, by the way, I was not aware of at the time because of my removal from this area, related to a procedure which was instituted perhaps in the early 1950's of intercepting—interception by the Customs Service of large quantities of propaganda coming into the country. And I think that was really the basis under which we started this particular program in 1954.

At that time, as now, we had, and still have, responsibility under the Foreign Agents Registration Act which provides for the registration with propaganda agents of foreign principals with the Attorney General. This Supreme Court decision addressed itself to that procedure, as I recall. And I don't think the decision made any difference

¹ See p. 250.

² See p. 256.

with regard to the legality of the operation which we were conducting or the illegality of the operation which was beyond the interception of the propaganda starting in 1956.

So, I would say the interruption was probably due to considerations by cooperating officials in the San Francisco area.

The CHAIRMAN. But as you have already testified, you cannot now and do not attempt to justify what happened?

Mr. WANNALL. I cannot justify what happened; no, sir.

The CHAIRMAN. Thank you very much.

Do you have any questions, Senator Mathias?

Senator MATHIAS. Yes. The previous document [exhibit 22¹] that Mr. Schwarz referred to and in which Director Hoover wrote the annotation, "another inroad!" raises, I think, a very interesting question. It raises the question of the areas of jurisdiction of the FBI and the CIA, and I believe Mr. Hoover had very strong ideas on this, didn't he?

Mr. MOORE. Definitely.

Senator MATHIAS. Probably his position and his ideas had a lot to do with the limitations which were placed in the National Security Act of 1947 which created the CIA and which, in effect, drew its boundaries at the waterline; would that be true?

Mr. MOORE. I believe so, sir.

Senator MATHIAS. Now, one other question that this committee is ultimately going to have to wrestle with is whether that is still a valid boundary for the CIA and whether or not, as we have seen, it is such an artificial boundary that the temptation to violate it is irresistible.

And I am wondering how you feel your relationships with the CIA have been under the present jurisdictional arrangements?

Mr. WANNALL. We have furnished, I think, to the committee, Senator Mathias, a copy of a document; it was a memorandum of understanding between the FBI and CIA, executed in about February of 1966. Within the past several months, there have been efforts to cover any areas that might not have been covered there.

We have consulted with the CIA and have come to mutually agreeable conditions, and the matter as of a month or so ago—I have not had a reading on it lately—was in the hands of the Attorney General for consideration.

We have had no real difficulties in defining our respective areas. Starting in the middle sixties—well, I shouldn't say starting in the middle sixties—when we have had matters of mutual interest, we have consulted. Starting in the middle sixties, I think this consultation has been more pronounced than it was prior to that time. And Mr. Branigan, who would have the greatest interest in this area, I think will possibly support my statement that we have been able to work out any problems that have arisen.

Mr. BRANIGAN. I certainly will support the idea.

We have an excellent liaison, an excellent working relationship with the Agency. This has been—I think in the past this has really been a bum rap, because our relationship with them has been good. It is a workable one.

Senator MATHIAS. When you refer to a bum rap, you mean the concept that there may be some conflict between the Agency and the FBI?

¹ See p. 244.

Mr. BRANIGAN. This is correct. This is correct, Senator. There has been quite a bit of publicity to the idea that there was a—well, we were at loggerheads; we did not get together. And this is not true.

Senator MATHIAS. Of course, one of the interests that we have here, as this whole hearing obviously illustrates, is the rights and privacy of citizens. But we are also vitally interested in the efficient operation of both the Bureau and the Agency. And we want to feel sure that both the Bureau and the Agency are operating in a climate which gives the Government the kind of information that it needs. Do you feel that there is an interlock today which is adequate for that purpose?

Mr. WANNALL. I feel there is an interlock. I think there is certainly an area to which this committee could address itself.

Earlier today I made the comment that the FBI does not have a charter for the production within the United States of positive foreign intelligence. And I think the CIA's charter is for the production of foreign intelligence, but I don't think it is defined as being within the United States. So there is an area here which I think could be very well addressed by legislation, placing the responsibilities where the Congress feels they should be placed.

Senator MATHIAS. When the CIA develops a line of interest—let us say somewhere outside the United States—and a trail leads back to the United States, is that the point at which the interlock begins to work and that you have communication as to the pursuit of that particular line of inquiry?

Mr. WANNALL. That is precisely covered in the February 1966 understanding; yes, sir.

Senator MATHIAS. It is my understanding that Mr. Hoover at one time prohibited personal communications between the Bureau and the Agency.

Mr. WANNALL. Mr. Hoover at one time discontinued the practice of having one man dedicated as a liaison officer with CIA, but he did not prohibit any contacts with CIA.

As a matter of fact, I think—

Senator MATHIAS. Even in that period of time?

Mr. WANNALL. Even in that period of time.

Senator MATHIAS. If there was something that required liaison, you could pick up the telephone and call your opposite number in the Agency and do what was necessary to do the public's business?

Mr. WANNALL. Yes; it had a very salutary effect in that regard, because I became cognizant of individuals who were my counterpart over in the Agency through whom I would deal previously by way of a liaison agent. So I think it possibly benefited this mutual arrangement, the mutual agreements, the mutual spirit of cooperation which I feel has developed. I don't recall any instructions Mr. Hoover ever gave which would preclude our dealing with CIA.

Senator MATHIAS. Of course, it somewhat confirms what you are saying, that there was, in fact, a relationship with respect to mail openings which went on over a period of time.

Mr. WANNALL. That is correct, sir.

Senator MATHIAS. A relationship in which the CIA responded to requests from the Bureau.

I might ask Mr. Mintz this question. Does the Bureau's legal counsel office review the legality of investigative techniques? Do you have an

opportunity to look at an operation and pass some legal judgment on that particular operation?

Mr. MINTZ. Absolutely.

Senator MATHIAS. You are not compartmented out of the process?

Mr. MINTZ. No; we are not at all. We are a part of the executive's conference where policy decisions are discussed. And when matters arise outside the executive's conference, I am contacted directly by other assistant directors who are my peers, and we discuss these matters. And I am frequently requested to give legal opinions.

Senator MATHIAS. Do you see reports, for example, from the Inspection Division?

Mr. MINTZ. Occasionally, but not as a regular matter. Inspection Division would inquire into—usually would inquire into operating procedures and efficiency and occasionally into matters of some concern concerning violations of our regulations. And once in a while, in those instances, I would be consulted.

Senator MATHIAS. But would there be any occasion when you might be denied information that would be contained in a report?

Mr. MINTZ. I have never been denied when I have asked for information in regard to matters I was inquiring into. I have never had an occasion when it was denied to me, Senator.

Senator MATHIAS. Looking to the future and to the kind of recommendation that this committee must make to the Senate on the specific question of mail problems, I am wondering if it would be appropriate that a warrant be required before implementation of mail openings?

Mr. MINTZ. Of course, that raises the matter that I mentioned this morning about there being the possibility of the existence of Presidential power independent of the legislative authority. That being the case, and that not being resolved, I can't really answer your question, Senator.

Senator MATHIAS. This morning Mr. Mitchell addressed himself to that question, and I couldn't help noting that his views hadn't changed over all the years since he first came to Washington. His views expressed this morning were essentially the same as those he gave to the Judiciary Committee in 1969.

Mr. MINTZ. I am sure that the Attorney General, Attorney General Levi, is concerned with this very question you raised, Senator. And I am confident that if there is an answer to be given, that the Attorney General will address that matter with the committee.

Senator MATHIAS. I think that we will have to determine the standards on which warrants would be issued, whether it be probable cause or some other standard.

Mr. MINTZ. If you assume a hypothetical, Senator, that a warrant would be required, the standard would necessarily have to be less than the probable cause standard now required in criminal cases, because at present, probable cause in criminal cases requires a great deal of particularity. We must be able to specify precisely the property or evidence that would be seized. We must be able to indicate the probability that a crime has been or is about to be committed.

In intelligence matters, we are unable to be quite that specific, and I refer you, Senator, to the court's decision in the *Keith* case in which they noticed the difference between regular criminal investigative matters and intelligence matters. And the problem of proof would be quite

different, and that would be a problem for us, should a warrant be required.

Senator MATHIAS. All right. I think intelligence value would be a standard that could be established separately.

Mr. MINTZ. That is correct.

Senator MATHIAS. I think it would have to be refined and defined.

Mr. MINTZ. I feel a standard like that could meet the fourth amendment test of reasonableness, and it would be in compliance with the Constitution.

Senator MATHIAS. I understand that as a representative of the Justice Department, you are limited in what you can say until some departmental policy is developed. But it would appear that this necessary governmental operation could function under some plan of that sort.

Mr. MINTZ. I suspect that it could; yes, sir.

Senator MATHIAS. Thank you, Mr. Chairman.

The CHAIRMAN. I believe that concludes the hearing this afternoon. I want to thank all of you gentlemen for your testimony and for coming back again this afternoon.

These hearings are adjourned until next week, subject to the call of the Chair.

[Whereupon, at 3:07 p.m., the committee recessed, subject to the call of the Chair.]

HEARINGS EXHIBITS¹

EXHIBIT 1

INSPECTOR GENERAL'S SURVEY OF THE
OFFICE OF SECURITY

ANNEX II

PROJECT SGPOINTER/JIGLINGUAL

1. This project is a sensitive mail intercept program started by the Office of Security in 1952 in response to a request from the SR Division. Under the original project, named SGPOINTER, representatives of the Office of Security obtained access to mail to and from the USSR and copied the names of the addressees and addressors. In 1955 the DD/P transferred the responsibilities in his area for this program from SR Division to the CI Staff, the program was gradually expanded, and its name was changed to JIGLINGUAL. Since then the program has included not only copying information from the exteriors of envelopes, but also opening and copying selected items.

2. The activity cannot be called a "project" in the usual sense, because it was never processed through the approval system and has no separate funds. The various components involved have been carrying out their responsibilities as a part of their normal staff functions. Specific DD/P approval was obtained for certain budgetary practices in 1956 and for the establishment of a TSD lab in 1960, but the normal programming procedures have not been followed for the project as a whole. However, the DCI, the DD/P, and the DD/S have been aware of the project since its inception and their approvals may thus be inferred.

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¹ Under criteria determined by the Committee, in consultation with the Central Intelligence Agency and the Federal Bureau of Investigation, certain materials have been deleted from these documents, some of which were previously classified, to maintain the integrity of the internal operating procedures of the agencies involved, and to protect intelligence sources and methods. Further deletions were made with respect to protecting the privacy of certain individuals and groups. These deletions do not change the material content of these exhibits.

3. The mechanics of the project can be summarized as follows.

Mail to and from the USSR and other countries is processed through the branch post office at LaGuardia Airport in New York City. The postal authorities agreed to a screening of mail by Agency representatives at this central point, and office space has been established there for three Agency officers and one representative of the postal service. As mail is received it is screened by the Agency team and the exteriors of the envelopes are photographed on the site. The volume being photographed at the time of the inspection was approximately 1,800 items per day. From this total the Agency team selects approximately 60 items a day which are set aside and covertly removed from the post office at the end of the day. These are carried to the Manhattan Field Office (MFO) and during the evening they are steamed open, reproduced and then resealed. The letters are replaced in the mails the following morning. The films are forwarded to the Office of Security at Headquarters and thence to the CI Staff, where dissemination is controlled.

4. The total flow of mail through the LaGuardia post office is not screened. The intercept team can work there only when the postal representative is on duty which is usually the normal five-day, 40-hour week. Mail, of course, is received and processed at the post office 24 hours a day, seven days a week. Thus much of the overseas mail simply is not available for screening. Registered mail also is not screened because it is numbered and carefully controlled; however, on occasion, it has been possible to remove and process individuals?

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items on a priority basis. In such cases it has been necessary to hold up the entire pouch until the letter is replaced.

5. Three Security officers at the MFO work fulltime on the project, and one clerical employee helps. Most of the officers' time is spent at the LaGuardia post office screening and photographing the exteriors of envelopes and supervising the actual openings during the evening. Several of the regular investigators of MFO have been cleared to work on the project, and overtime has been authorized up to eight hours per pay period for each employee involved. The normal evening sessions are from 5:00 to 9:00 PM. This is a highly efficient way to get the job done and the investigators enjoy the work and appreciate the opportunity to earn overtime pay. There is some question, however, concerning the administration of overtime pay. The Office of Security has ruled that overtime will not be paid to any person who takes leave, sick or annual, during the week within which the overtime is worked. This means that an officer who is ill after having worked his evening tour must nevertheless come to the office or forfeit his overtime pay. It also means that an officer who is sick early in the week cannot afterward work his scheduled evening shift and be paid for it. The Office of Security should review its policy in this regard.

6. The principal guidance furnished to the interception team is the "watch list" of names compiled by the CI Staff. Names may be submitted by the SR Division, the FBI, the CI Staff, or the Office of Security. The list is revised quarterly to remove names no longer of

interest, and it ranges between 300 or 400 names. The list itself is not taken to the Insurgencia post office, and the three team members have to memorize it. Headquarters has compared the actual watch list intercepts with the photographs of all exteriors, and there has not yet been a case of a watch list item having been missed by interceptors. Of the total items opened, about one-third are on the watch list and the others are selected at random. Over the years, however, the interceptors have developed a sixth sense or intuition, and many of the names on the watch list were placed there as a result of interest created by the random openings. A limited amount of guidance is given in specific area or topical requirements, but this is not very satisfactory. The interception team has to rely largely on its own judgment in the selection of two-thirds of the openings, and it should have more first-hand knowledge of the objectives and plans of operational components which levy the requirements. Information is now filtered through several echelons and is more or less sterile by the time it is received in New York.

7. One of the uncertainties of the project is lack of specific knowledge concerning early agreements with postal authorities and any commitments which the Agency may have made. Senior postal authorities in Washington approved the earlier phases of the activity. There are no documents to support this, however. After the initial acceptance of the project by postal authorities, liaison responsibilities were transferred to the Office of Security and have since been handled by the chief of MFO. The designated liaison officer for the postal service

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is the head of its Inspection Service in New York. The Agency has been fortunate in that the same persons have been associated with the project since its inception. Details of agreements and conversations have not been reduced to writing, however, and there is now some uncertainty as to what the postal authorities may have been told or what they might reasonably be expected to have surmised. This is important because the New York facility is being expanded in the expectation that we will continue to have access to the mail. The very nature of the activity, however, makes it impossible at this point to try and have a firm understanding with postal authorities. There thus seems to be no alternative except to continue relying on the discretion and judgment of the persons involved.

8. The postal representative designated to work with the interceptor team at LaGuardia is a relatively junior but highly intelligent mail clerk. He probably suspects but has not been informed that the Agency is sponsoring the program. He is not a member of the postal Inspection Service, but reports to it on matters concerned with the project. This has placed him in a very unusual position in the post office, since he is on the T/O of the LaGuardia office. The chief of MFO unsuccessfully suggested to the local chief of the Inspection Service that the cover of this individual would be improved if he could be made a part of the service to which he reports. Because of the mail clerk's long association with the activity it should be assumed that he knows our basic objectives. On the other hand, there is no evidence that he has ever communicated this knowledge to his New

York superiors. It is possible, of course, that key postal officials both in New York and Washington suspect the true nature of the activity and have decided not to make an issue of it so long as they are not required officially to sanction it. In any event, the success of the project depends upon the cooperation of the mail clerk because mail cannot be removed without his knowledge. If he should be replaced it would probably be necessary to withdraw from the operation until his successor could be evaluated.

9. For the past four years processing of opened letters has been limited to reproduction of the contents and analysis at headquarters. In February 1960, however, the Chief of Operations, DD/P, approved the establishment of a TSD laboratory to make technical examinations of the correspondence. The T/O for the unit is one GS-14 chemist, one GS-11 assistant and one GS-5 clerk/secretary with flaps and seals experience. A GS-11 has been hired and trained for the senior position, and a GS-9 is being sought for the other slot. The T/O and annual costs of the lab will be charged to TSD. Lab premises in New York were in the process of being leased during the inspection, and probably will be in the same building as MFO. The objectives of the lab group will be (a) examination of correspondence for secret messages, (b) detection of USSR censorship techniques and development of better operational methods to avoid such techniques, and (c) an increase in the quantity and quality of the present operations. TSD has shown considerable enthusiasm for the activity, not only because of the obvious contributions which,

might be made to the intelligence effort, but also because it offers a workshop to test some of the equipment which TSD has developed.

10. Although an inspection of participating DD/P components is beyond the scope of this survey, the activity cannot be viewed from the Office of Security alone. DD/P responsibilities for the activity now rest with the CI Staff and are discharged by the Projects Branch, a unit with 15 positions devoted full time to processing the film and reproduced correspondence. The T/O includes four senior analysts who have broad language capabilities, and a group of junior analysts who handle material in English. Also included is an IBM key punch operator who makes the IBM index cards for CI files. The clerical staff has had limited language training to facilitate the transliteration of Russian for indexing. As the reproduced letters are received by the Projects Branch, they are analyzed and dissemination proposed. This dissemination is subject to review by the Acting Chief, CI Staff, and extreme care is given to protecting the source.

11. The SR Division is the project's largest customer in the Agency. Information from the CI Staff flows to the SR Support Branch and from there to the operational branches. It may include

items of interest on conditions inside the country. In

our interviews we received the impression that few of the operational leads have ever been converted into operations, and that no tangible operational benefits had accrued to SR Division as a result of this project. We have noted elsewhere that the project should be carefully evaluated, and the value of the product to SR Division should be one of the primary considerations.

12. Disseminations to the FBI are approximately equal to those made to SR Division. Since the information is largely domestic CI/US, it is not difficult to conclude that the FBI is receiving the major benefit from this project.

13. The annual cost of this activity cannot be estimated accurately because both administration and operations have always been decentralized. The costs are budgeted by the contributing components as a part of their regular operating programs. The expenses of the New York facility are absorbed by the Office of Security as a part of the Manhattan Field Office budget. The cost of the new lab, including personnel and equipment, will be borne by TSD. The Project Branch of the CI Staff, the largest unit involved, is budgeted as a regular staff component of the CI Staff. Administrative costs within the headquarters components of SR Division and the Office of Security are included in their regular budgets. This dispersal of costs throughout the budgets of other components is an effective security device and should be continued, but we believe that it is nevertheless necessary that exact cost figures be developed to permit Agency management to evaluate the activity.

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14. There is no coordinated procedure for processing information received through the program; each component has its own system. The Office of Security indexes selected portions of the information in its Security Records Division. The CI Staff indexes the opened mail as well as a large percentage of the photographed exteriors. The SR Division maintains its own file system, and the information sent to SR Division by the CI Staff is frequently indexed by the Records Integration Division while it is in transit. The FBI is one of the largest customers and it is assumed that it also indexes the material it receives. The same material could thus be recorded in several indices, but there is no assurance that specific items would be caught in ordinary name traces.

The CI Staff uses its IBM index cards to make fan-folds which are distributed monthly, quarterly, and semi-annually on a need-to-know basis.

15. The general security of the project has always been maintained at a very high level. When intelligence information is disseminated the source is concealed and no action can be taken until a collateral source is found.

Office of Security has not obtained full clearances on post office personnel with whom it is dealing. This should be done in the case of

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the mail clerk who can be presumed to know much of what is going on.

Another oversight is the absence of any emergency plan for use if the project should be exposed and time prevented consultation with headquarters. On the whole, security has been exceptionally good.

16. Probably the most obvious characteristic of the project is the diffusion of authority. Each unit is responsible for its own interests and in some areas there is little coordination. The Office of Security has full responsibility for the operation of the New York facility, for liaison and coordination with postal authorities, and for related matters. The CI Staff is the focal point of the DD/P interests. TSD will be responsible for the personnel and equipment in the new lab, although the lab will be under the administrative jurisdiction of MFO. SR Division requirements are forwarded through CI Staff to the Office of Security, but SR Division has little knowledge of the capabilities of the interceptor group; the interceptors have even less knowledge of the over-all aims and objectives of the SR Division. There is no single point in the Agency to which one might look for policy and operational guidance on the project as a whole. Contributing to this situation is the fact that all of the units involved are basically staff rather than command units, and they are accustomed to working in environments somewhat detached from the operational front lines. Because each of the units is accustomed to this type of limited participation, there has been no friction and cooperation has been good. The greatest disadvantages of this diffusion of authority are (a) there can be no effective

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evaluation of the project if no officer is concerned with all its aspects, and (b) there is no central source of policy guidance in a potentially embarrassing situation.

17. We do not advocate a change in the methods of operation, nor do we believe that the responsibilities of the participating components should be diluted, but we feel that the activity has now developed to the point that clear command and administrative channels for the over-all project are essential. We also believe that a formal evaluation of the project is required.

18. Operational evaluation should include an assessment of over-all potential. It is improbable that anyone inside Russia would unwittingly send or receive mail containing anything of obvious intelligence or political significance. It should also be assured that Russian tradecraft is as good as our own and that Russian agents communicating with their headquarters would have more secure channels than the open mails. On the other hand, many seemingly innocent statements can have intelligence significance. Comments concerning prices, crop conditions, the weather, travel plans, or general living conditions can be important.

No intercept program

can cover the entire flow of mail, and the best that can be done is to develop techniques which will provide a highly selective examination of a small portion. With the limitations imposed by budgetary and

personnel ceilings, as well as by policy considerations, it must be recognized that the full potential of this project is not likely to be developed. However, it does provide a basic apparatus which could be expanded if the need arose.

Recommendation No. 41:

- a. The DD/P and the DD/S direct a coordinated evaluation of this project, with particular emphasis on costs, potential and substantive contribution to the Agency's mission.
- b. An emergency plan and cover story be prepared for the possibility that the operation might be blown.

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EXHIBIT 2

. 21 NM 1855

MEMORANDUM FOR: Chief of Operations

SUBJECT: Project HTLINGUAL

1. The HTLINGUAL project outline is attached. It is self-explanatory as a project with the exception that having been aware of the previous operation, you undoubtedly will have certain questions which we hope to answer in this cover memorandum.

2. The personnel required for the project on the part of the Security Office is approximately the same as the number and grades of those currently used with the exception that Security is running the project through full-time use of some employees and part-time of others who should be on other regular Security jobs. Their total time is between seven and eight people full-time. With the personnel freeze and the mounting backlog, Security cannot continue the present operation without a staff increase as indicated.

3. The only added function that will be performed by Security in the new project is that more letters will be opened. They are presently able to open only a very limited number. Under the new set-up with full-time employees, Security will be able to obtain the addressee and addressee on the total correspondence as against approximately 75 percent at the present time.

4. The added space is necessary to enable the opening of more letters. Presently letters are opened without the knowledge of the Post Office Department on a completely surreptitious basis, namely, swiping a letter, processing it at night and returning it the next day. The processing is after hours in the Security Office's New York office. This not only involves overtime but is impossible to handle on any increased scale. It will be necessary to get an added room for this processing with permanent equipment. The cost for

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this added room is included; however, it is not known whether added space may be obtained without cost. In order to acquire more letters for processing, added room may be necessary at the airport in New York. This cost is included; however, again it may not be necessary to expend any money since the Post Office may be able to handle the matter for us. In other words, it is necessary to get the mail delivered to a separate room where no other Post Office employees are present. At the present time, an unwitting Post Office employee is working with our people. The item for space in Washington, while possible, is not probable, since this space does not need to be at any particular point in the Washington area.

5. Our Security people are documented as Iden 27

So far there has been no suspicion in the main post office in New York or at the airport that they are other than Iden 27. The cover story is that they are doing certain research work on foreign mail for the Iden 28

6.

7.

8.

9. The scope of this project could be greatly expanded, since it does not cover a substantial amount of mail which comes into other post offices and since it is envisioned that only a relatively small percentage of the mail will be opened. Based on a year's operation of the

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project as currently envisioned, a detailed analysis can be made to determine whether it should be abandoned, expanded, or maintained at its present scope. It is our opinion that the Agency will desire to expand the project to the maximum extent possible within the limits of security and the limits of the Post Office Department's cooperation.

10. It is desired to point out that the Security Office advises that they cannot continue the project unless added slots are made available to them. From the DD/P standpoint, we believe that we are not at the stage of either developing the project as indicated or discontinuing it, since the material is not being exploited nearly to the extent that it could be.

11. The cost of the project appears large; however, from the above analysis you can see that this cost is almost entirely the salaries of staff employees, including headquarters processing. The cost of many of the Agency's projects would appear very high if the total staff personnel (including headquarters) cost was added to them.

Signed: James Angleton

James Angleton
Chief, Counter Intelligence Staff

Attachment (1)

DC/CI:iden 4 jbr (18 Nov 55)

Distribution:

Orig & 1 - Addressee

1 - CI/SIU

1 - C/CI Chrono

1 - To be informally handed to Iden 15

by Iden 1

11/21/55: Note by Mr. Angleton on the cover sheet to COP:

Dick: The work on this was done by Iden 4 and Iden 30

7 November 1955

Project Cryptonym or Subject: ATLANTISSub-Project Cryptonym or Identification: NAAmendment No.: NA

Originating Division: Counter Intelligence Staff/DD/P

a. Division Chief: James Angleton, Ext.

b. Branch Chief:

c. Case Officer: To be selected

Target Area: ESCR

Type of Project: Counter intelligence. This project is primarily of a counter intelligence nature, although it is expected to produce valuable information in support of F1 operations.

Financial Mechanism: Direct use of Agency personnel and equipment exclusively.

Funds Requested: Total funds requested for fiscal year 1956: \$33,722.50. Of this sum, \$40,230.00 to be allocated for expenditures by the Security Office and \$46,492.50 by CI Staff of DD/P.

Current Status: This is a new project.

1. OBJECTIVE:

To acquire discreetly and utilize accessible intelligence information by examination of and recording data concerning postal communications to and from the USSR, entering and departing the United States or passing through the United States to and from other countries. Under present circumstances in which no United States censorship or monitoring of mails exists, much information no doubt of considerable value is not acquired and is reaching the target country without our knowledge. There will, in fact, be no censorship of mails in the course of this project; but a discreet monitoring of mails will be undertaken and accessible information will be recorded and analyzed and thereafter made available, with appropriate restrictions as to its use, exclusively to the components of the Agency which could use the information in the furtherance of their respective missions.

2. ORIGIN and POLICY GUIDANCE:

a. Origin: SR/DD/P originally suggested to the Security Office that it explore the possibility of obtaining information by monitoring postal communications. This was prompted, of course, by the limited sources available and the priority given to its target of operations. Whereas the project has a great potential value in the support of positive intelligence operations directed against the USSR by SR/DD/P, it also has considerable potential value to many other divisions of DDCI and a major potential value to counter intelligence operations Agency-wide. Numerous documents could be cited, placing responsibilities on the Agency which would justify the undertaking; however, since the project is considered primarily of a counter intelligence nature, a field of activity in which there is no question of Agency responsibility, there would appear to be no need for specific citations of the documents herein.

b. Whence Proposed: This project originated in and is exclusively a Headquarters project.

3. SITUATION:

There is no overt, authorized or legal censorship or monitoring of first class mails which enter, depart or transit the United States at the present time. This situation has historically existed in

peacetime. It must be assumed that foreign espionage agents have relied on this policy of the United States Government; and this has resulted in the extensiveness of the mails for intelligence purposes to our detriment. Considering the known interest of the Soviet Union and its present war potential, there is ample justification for taking all possible discreet steps to counter the effects of such use. In view of the difficulty in obtaining intelligence information from within the USSR, this activity should afford a vital and continuing source of counter intelligence and operational data from this sensitive area. It will be an entirely new avenue of information in the field of counter espionage.

4. PROPOSAL:

It is proposed that through the use of Agency-employed personnel exclusively, but with cooperation of the Post Office Department: (1) To gain access to all mail traffic to and from the USSR which enters, departs or transits the United States through the Port of New York; (2) That the raw information acquired be recorded, indexed and analyzed and various components of the Agency furnished items of information which would appear helpful to their respective missions. The Security Support Division of the Security Office has authomatically employed the possibility of discreetly gaining access to such information and is currently in a position to obtain relatively good coverage, on being authorized necessary funds for personnel, equipment and, if necessary, space. SSD will be the arm of the Agency for acquisition of all information and will be the responsible office for dissemination to officers of the Security Office items of information pertinent to its functions in counter intelligence relating to Agency personnel. The Special Investigations Unit of the Counter Intelligence Staff will be the responsible office for receiving all raw material from SSD/SD, recording, indexing and analyzing the material and disseminating pertinent information to other Agency components.

5. OPERATIONAL OUTLINE:

This program was originally suggested by the SR Division/SD/S, which requested that the Security Support Division of the Security Office explore the possibility of obtaining intelligence information through exterior monitoring of traffic with the knowledge of the Post Office Department. Over the past two years the confidence of postal authorities has been developed and recently, negotiations indicated that we may have all USSR traffic for exterior examination.

The acquisition of information will be effected by a special group of personnel operating out of the covert Security Office in New York City. This group will have access to incoming, outgoing and transit mail under obscure circumstances through a very limited number of high officials of the Post Office Department. There will be no delay in the movement of postal traffic which could affect the security of the project. Personnel well trained in the field of mail interception will be used and sufficiently rapid photographic reproduction processes employed. The commitment of GSD/CS personnel will be insufficient to perform the necessary procurement and photographing of material involved. The professional and clerical personnel will require special qualifications, including certain technical skills and language ability.

The New York Post Office is thought by informed postal officials to handle the majority of the mail in interest. When adequate coverage is obtained at New York and the documentary take is receiving the required processing in the Special Investigations Unit, CI Staff, an assessment of the value of the project will be made and consideration will be given to the expansion of coverage to other cities in the United States. It is not contemplated that expansion of coverage to other cities will take place during fiscal year 1966; but it is expected during fiscal year 1967. Existing cooperation of postal officials indicates that necessary secure arrangements may be made for coverage in other United States cities.

Under the conditions existing whereby our personnel are gaining access to material of interest in New York, for exterior examination, it is possible to discreetly gain exclusive access to the contents (interior) of a limited number of selected communications. This does not have the expressed or tacit approval of postal authorities; but the method of acquisition and examination and the working relationship between covert Agency personnel and postal officials indicate that no particular security hazard is involved. It is estimated that it will be possible to make discreet interior examination and photograph the contents of approximately two per cent of all incoming communications from the USSR, or approximately four hundred per month. There is little possibility that this number could be raised without concurrence in the activity by postal authorities. That is considered doubtful without a direct approach at the highest Agency and Post Office level. It is possible to gain access to outgoing material for interior examination, to a lesser degree.

Whereas the target is the U. S., the proposed operation will afford access to mail transiting the United States through the Port of New York from other countries and, at any given time personnel engaged in the acquisition of material may be directed to concentrate on a particular country, such as Guatemala, when an emergency arises, or concentrate on a particular person whose correspondence is known to be of strategic interest. The determination of the relative importance of concentrating efforts on any particular area will be made by the Chief, CI/SD/F, or a superior official.

6. SECURITY:

c. Operational security. Within the Agency strict control of the take will be exercised and knowledge of the existence of the project will be on a need-to-know basis. In the event of compromise of the aspect of the project involving internal monitoring of the mails, serious public reaction in the United States would probably occur. Conceivably, pressures would be placed on Congress to inquire into such allegations; but it is believed that any problems arising could be satisfactorily handled. Compromise of the external monitoring aspect would be much less serious, but would, nevertheless, seriously jeopardize the value of the project. Other intelligence

agencies of the United States, upon becoming knowledgeable, would conceivably agree with Agency on briefings necessary to receive cooperation with regard to this operation. Any compromise whatever to personnel outside of CIA, whether in the intelligence family or not, would probably result in the immediate withdrawal of Post Office cooperation, making it impracticable to continue the project. For this reason Agency Security require that no disclosures whatever be made to any person outside CIA (excepting such postal officials as may be necessary) that the project is existent or contemplated and that no outside dissemination of information received be made, orally or in writing. Special briefings of those to become knowledgeable will be given and a record kept of those so briefed. CIA staff employees only will be eligible for briefing.

EXHIBIT 3

100-14556
14 MAY 1956

MEMORANDUM FOR: Director of Central Intelligence

THROUGH: Chief of Operations, DD/P

SUBJECT: Project HTLINGUAL

1. This memorandum is for information only.
2. You will recall that Project HTLINGUAL is a very sensitive project involving the analysis of mail entering New York City from the Soviet Union. While the project was originally designed to examine and record information from only the outside of the envelopes, for some time selected openings have been conducted and the contents examined. This is, of course, without the knowledge of the postal authorities.
3. An examination of the contents of thirty-five communications from the Georgian Republic prior to the 9 March 1956 uprisings showed no indications of discontent in any manner. The letters were apparently written by individuals with little educational background and uniformly concerned themselves with gossip about relatives and friends.
4. A traffic analysis of mail from the Soviet Union indicates that there had been a steady decline in total mail from the Georgian Republic for some months prior to 9 March. Since 9 March there has been a complete cut-off of all mail from Georgia. Traffic from adjoining Armenia and Ukraine, however, has shown no appreciable change during the past several months. Samplings of letters opened from the Moscow area have contained no comments at all concerning the uprisings in Georgia.
5. It is interesting to note that of twenty letters which were in the analysis, one mentioned that a brother was a priest, two had Christmas greetings, four started out with the wording "Praised be Jesus

Christ", one used the phrase "Thank God"--for a total of eight out of twenty with some religious reference.

6. It is hoped that when we are better staffed to analyze this material for other than counterintelligence purposes, other and perhaps more significant data may be obtained.

J. Angleton

James Angleton
Chief, Counter Intelligence Staff, DD/P

EXHIBIT 4

3 June 1971

MEMORANDUM FOR THE RECORD

SUBJECT : Meeting at DCI's Office Concerning
HTLINGUAL

1. At 10:30 a.m. this date, Mr. Helms convened in his office the DDP, the C/CI, the D/S, and C/CI/Project to report on recent action taken by him concerning the HTLINGUAL operation.

2. Mr. Helms stated that on Monday he had briefed Attorney General Mitchell on the operation. (Note: Mr. Helms may have meant Tuesday, 1 June, Monday having been a holiday). Mr. Helms indicated that Mr. Mitchell fully concurred in the value of the operation and had no "hang-ups" concerning it. When discussing the advisability of also briefing Postmaster General Blount, Mr. Mitchell encouraged Mr. Helms to undertake such a briefing.

3. The DCI then indicated that yesterday, 2 June 1971, he had seen Postmaster General Blount. Mr. Blount's reaction, too, was entirely positive regarding the operation and its continuation. He opined that "nothing needed to be done", and rejected a momentarily held thought of his to have someone review the legality of the operation as such a review would, of necessity, widen the circle of witting persons. Mr. Helms explained to the PMG that Mr. Cotter, the Chief Postal Inspector, has been aware of the operation for a considerable period of time by virtue of having been on the staff of CIA's New York Field Office. Mr. Helms showed the Postmaster General a few selected examples of the operation's product, including an item relating to Eldridge Cleaver, which attracted the PMG's special interest.

4. In an aside, Mr. Osborne mentioned that he had seen Mr. Cotter since Mr. Helms' meeting with the Post-

master General and that Mr. Cotter reported that he felt that his stock with the Postmaster General had gone up several notches.

5. It was obvious that all present were gratified by the favorable reception Mr. Helms had met in briefing the two mentioned Cabinet officers.

6. The DCI took the occasion to stress again the security aspects of the operation and stipulated that, in the event of any sort of security flap or even a suspicion that a leak of some sort had occurred, the intercept operation was to cease immediately and our men were to be withdrawn to the New York City base. Mr. Helms wished to convey the importance of stopping first and investigating later. If a subsequent investigation showed that indeed no damage had occurred, it would then be possible to resume the operation.

7. Both Mr. Helms and Mr. Karamessines recommended tight control over the number of Agency persons cleared for, and witting of, the operation.

8. The meeting ended at 10:40 a.m.

EXHIBIT 5

30 August, 1971

MEMORANDUM FOR : DC/CI

SUBJECT : HTLINGUAL - Correspondence of Members of the
United States Government.

1. In order to avoid possible accusations that the CIA engages in the monitoring of the mail of members of the U.S. Government, the C/CI may wish to consider the advisability of (a) purging such mail from the files and machine records of the Project, and (b) authorizing the issuance of instructions to the "collectors" to cease the acquisition of such materials. Instructions would have to define in specific terms what categories of elected or appointed personnel were to be encompassed, and whether they extended to private mail communications. ✓✓

3. Should C/CI decide in favor of purging, the Project should also be authorized to destroy at Headquarters any materials in the specified categories which the "collectors" may pick up through inadvertence. ✓✓

4. In this connection it is pointed out that CI/SI's current dissemination instructions to Project HTLINGUAL include the following statement:

JW ✓✓
1975 "Items concerning any U.S. Government officials or employees, or individuals possibly employed by, or connected with, the U.S. Government including civilian and military personnel (these items should not be given any further internal distribution)".

61A
Chief, CI/Project

P-112.53

22 December 1971

MEMORANDUM FOR THE RECORD

SUBJECT : Handling of Items To and From Elected or Appointed U.S. Officials

1. In accordance with a new policy confirmed yesterday by CJ/EXO/Hubbard and C/CIOF/Hiller, Project HTLINGUAL will handle henceforth as follows items originated by or addressed to Elected or Appointed Federal and Senior State Officials (e.g. Governor, Lt.Governor,etc.):

- a. No officials in above categories are to be watchlisted;
- b. No instructions to be issued to interceptors especially requesting or forbidding the acquisition of items in cited categories; thus acquisition will be left entirely to chance;
- c. If an item is received having been recognized by the intercept crew as being in this special category, it will most likely reach Headquarters separately, i.e., outside the regular bundle. Such item will not be made part of any bundle, but is to be referred immediately to C/CJ/Project;
- d. If an analyst recognizes an item referred to him/her for summarizing~~transmitting~~; in the stated category, he will immediately refer such item to C/CJ/Project prior to any summarization; if C/CJ/Project confirms the items as being in the special category, he will arrange to remove the item from the bundle (i.e. remove identification number) and assume responsibility for further handling himself;
- e. Any reference to special category items in the bundle transmission memorandum will be excised by C/CJ/Project;
- f. No special-category items shall be carded for inclusion in the HTLINGUAL Machine Records System;
- g. Dissemination of special-category items will be at the discretion of CJ/CJ (and/or C/CJ) ONLY;
- h. All special-category items will be filed in a separate file titled "SPECIAL-CATEGORY ITEMS", which will be kept in C/CJ/Project's safe; this file will also contain a log indicating dissemination, if any directed, return of items by cleared customers, etc. This file will of course be available to analysts requiring it for a research that may be necessary.
- i. Since we have no very clear-cut definition of what constitutes a special-category item, please refer any item which may have been given you and which you feel may-possibly fall into said category to C/CJ/Project for discussion and decision.

26	Copy 1 Return this document discrepancy and misunderstanding
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h. Most probably, DC/CI (and/or C/CI) will not prescribe dissemination of special-category items to the FBI since such a step would reduce somewhat our control of such item.

i. Dissemination of special-category items, if decided upon by DC/CI and/or C/CI, shall not be reflected in the log book and dissemination statistics.

j. Mention, in regular summaries, of special-category officials as Third Parties is authorized.

C/CI/Project

PS: No copies shall be made of summaries on special-category items either for the analyst's file or the reading file!

No references shall be made in regular summaries to any special-category items

Read and Understood:

Date:

GKA

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EXHIBIT 6

CHART SHOWING NOTIFICATION OF POSTMASTERS GENERAL
CONCERNING MAIL OPENINGS

Arthur E. Summerfield	1953-61	Summerfield met with Dulles and Helms on May 19, 1954. Advised of New York Mail Opening Project. Approved CIA request to photograph the covers of mail.
J. Edward Day	1961-63	On February 15, 1961, Dulles and Helms met with Day. Helms has testified that he fully briefed Day on the New York Project, including the mail opening aspect. Day has testified that he asked not to be informed of the details and was not.
John A. Gronouski	1963-65	Not informed.
Lawrence F. O'Brien	1965-68	Not informed.
William M. Watson	1968-69	Not informed.
Winton M. Blount	1969-71	Met with Helms on June 2, 1971. Helms has testified that he fully briefed Blount on the New York Project, including mail opening. Indeed, Helms claims to have shown Blount copies of opened mail. Blount has testified that he was "briefed" on the project but never informed that mail was being opened nor shown samples.
Elmer T. Klassen	1971-75	Not informed.

EXHIBIT 7

23 April 1965

MEMORANDUM FOR FILES

SUBJECT: Discussion with ADB/P Concerning KALENDAR Operation and Congressional Subcommittee Hearings Concerning Tampering with the Mail

✓ 1. CIA officer and the writer met with Mr. Karamessines on 21 April at 4 p.m. to discuss the security aspects of the KALENDAR Operation in consideration of Senator Long's Congressional subcommittee hearings.

2. The Washington Post and the New York Times, on 14 April, had reported that Representative Hall of Missouri had been told by one of his constituents that the Internal Revenue Service had been seizing mail containing property belonging to tax delinquents. Hall told Long's subcommittee that he has received "unverified" information that other agencies are also snooping into the mail. Chief Postal Inspector Montague had testified in February to the subcommittee that "the seal on a first-class piece of mail is sacred". Representative Hall's information contradicts this statement.

3. Mr. Karamessines felt that the dangers inherent in Long's subcommittee activities to the security of the Project's operations in New York should be thoroughly studied in order that a determination can be made as to whether these operations should be partially or fully suspended until the subcommittee's investigations are completed.

✓ 4. CIA officer asked Mr. Karamessines if the Chief of Security, Mr. Cobourne, had contacted him. The answer was, "No". CIA officer went on to outline the substance of the talk he had had with DC/OS [redacted] of the Office of Security, who had told him that Security was not planning to make any changes in their KALENDAR operational activities at present. White explained that he had discussed the situation in detail with Mr. Montague since Hall's statement of 14 April and had been told that Montague's opinion was that the subcommittee's investigations would soon cool off. Mr. Karamessines asked CIA officer to put into writing the fact that Cobourne had considered this security problem and had agreed that no change in the operational activities need be made at this time.



7. Mr. Karamessines brought up the question of what persons outside the Agency have been briefed as to the actual operations of PRINCIPAL. He was told that, at the present time, there are no officials in the post office or elsewhere in the government who had been so briefed. Karamessines suggested that consideration be given to possibly briefing Postmaster General Gronouski after the subcommittee activity has been discontinued. The writer stated that he would recommend against this in view of various statements by Gronouski before the Long subcommittee. Karamessines agreed with this thought and suggested that, in his opinion, the President would be more inclined to go along with the idea of the operation. [CIA Officer] and the writer both expressed agreement with this idea, and the ADD/P gave instructions that steps be taken to arrange to pass this information through McGeorge Bundy to the President after the subcommittee has completed its investigations.

[CIA Officer]



EXHIBIT 8

16 February 1961

MEMORANDUM FOR: Deputy Chief, CI

SUBJECT: BILINGUAL

1. This is to note for the record that on 15 February the Director, Chief, TSD, and the unassigned called on Mr. Edward Day, the Postmaster General, for the purpose of briefing him on subject project. We gave him the background, development, and current status, withholding no relevant details.

2. After we had made our presentation, the Postmaster General requested that we be joined by the Chief Postal Inspector, Mr. Henry Montague. This gentleman confirmed what we had had to say about the project and assured the Postmaster General that the matter had been handled securely, quietly, and that there had been no "reverberations". The meeting ended with the Postmaster General expressing the opinion that the project should be allowed to continue and that he did not want to be informed in any greater detail on its conduct. We agreed that the fewer people who knew about it, the better.

Richard Helms

Chief of Operations, ED/P

Distribution:

1 - Director
1 - unassigned
1 - ED/P-DO/P

EXHIBIT 9

19 May 1971

MEMORANDUM FOR THE RECORD

SUBJECT : DCI's Meeting Concerning HTLINGUAL

1. At 10:00 A.M. this date, Mr. Helms convened the following in his office to discuss the HTLINGUAL operation: the DDP, the C/CI, the D/S, the DC/CI, and C/CI/Project.

2. The DCI opened the meeting with a reference to an inquiry as to possible mail tampering by Government agencies, addressed to the Chief Postal Inspector, Mr. Cotter, by Dr. Jeremy J. Stone on behalf of the Federation of American Scientists. On the question as to what may have prompted the letter, the DDP mentioned the possibility that the information might have come from Herbert Scoville, a member of the Federation's Council who, while in CIA employ, had been briefed on the Project. It was stated that Mr. Scoville had not been a consumer of HTLINGUAL material for many years, and could not know that HTLINGUAL had continued beyond the time when he was informed of it. The DCI stated that he was not over-concerned about Mr. Scoville.

3. The DCI then asked, who outside of CIA knows about the HTLINGUAL operation or gets its material. The C/CI replied: only the FBI.

4. The DCI then asked, who in the POD knows the full extent of the operation - beyond cover surveillance. The C/CI replied that only Mr. Cotter knows, for he had been witting while with CIA and the O/S. The previous Chief Postal Inspector, Mr. Montague, had never wanted to know the extent of examination actually done, and was thus able to deny on oath before a congressional committee that there was any tampering. Mr. Cotter would be unable to make such denial under oath. In an exchange between the CCI and the DDP it was observed that while Mr. Cotter's loyalty to CIA could be assumed, his dilemma is that he owes loyalty now to the Postmaster General.

5. When the DCI mentioned the theft of FBI documents from their Media, Pa., office, the DDP stated that he had been informed that the copy of the letter mentioned in the press had come from HTLINGUAL. The C/CI/Project interposed, with apology to the DDP, that it had been positively verified from the Project's record, and a memo had been written to the effect, that the Project had never seen the letter, and that, as a piece of domestic mail, the letter would not have been available to HTLINGUAL, which has access only to an international airmail facility.

6. Mr. Helms stated that he would accept the evidence of the ETLINGUAL record, but he then asked, how long has the FBI known about the operation and how long have they been getting its material. The C/CI replied that FBI awareness came in 1958 when, in January, they requested permission from Chief Postal Inspector Stevens to examine mail to/from the USSR. Stevens had advised CIA of the request and had sanctioned CIA's revealing the operation to the FBI and therefater servicing the Bureau with items of national security interest. This was five years after the operation had started in 1953.

7. Mr. Helms asked whether the FBI passes the material to other agencies, or outside its headquarters office. The D/CI replied that it did not, in accordance with the original agreement; that the unit receiving the material passes only sanitized leads within the Bureau whenever investigation is warranted.

8. The DCI then inquired how many persons in the FBI know about the operation or are privy to its take. The C/CI/Project stated that he had originally been told that only a small unit of two or three see and handle the material, and that this had been confirmed by the FBI liaison officer, Mr. Papich, about three years ago. The DCI stated that he wants to know how many and who

in the FBI know about it now.

9. On the question of continuance, the DDP stated that he is gravely concerned, for any flap would cause CIA the worst possible publicity and embarrassment. He opined that the operation should be done by the FBI because they could better withstand such publicity, inasmuch as it is a type of domestic surveillance. The D/S stated that he thought the operation served mainly an FBI requirement. The C/CI countered that the Bureau would not take over the operation now, and could not serve essential CIA requirements as we have served theirs; that, moreover, CI Staff sees the operation ~~as~~ foreign surveillance.

10. Mr. Helms then asked what should be done: do we want to continue the operation in view of the known risks? The C/CI replied that we can and should continue to live with them.

11. The DCI then stated that he would have to discuss the matter with Mr. Cotter, and requested the D/S to arrange a meeting. After that meeting, he said, he would determine whether Mr. Blount should be informed.

12. As the meeting closed, the DCI told the C/CI/Project to monitor the operation most discreetly, and bring any problem or difficulty directly to him.

13. The meeting ended at about 10:45.

EXHIBIT 10

Retyped from illegible copy.

16 February 1961

MEMORANDUM FOR: Deputy Chief, CI
SUBJECT: HTLINGUAL

1. This is to note for the record that on 15 February the Director, Chief, TSD, and the undersigned called on Mr. Edward Day, the Postmaster General, for the purpose of briefing him on subject project. We gave him the background, development, and current status, withholding no relevant details.

2. After we had made our presentation, the Postmaster General requested that we be joined by the Chief Postal Inspector, Mr. Henry Montague. This gentleman confirmed what we had had to say about the project and assured the Postmaster General that the matter had been handled securely, quietly, and that there had been no "reverberations". The meeting ended with the Postmaster General expressing the opinion that the project should be allowed to continue and that he did not want to be informed in any greater detail on its handling. He agreed that the fewer people who know about it, the better.

Richard Helms
Chief of Operations, DD/P

Distribution:
Orig. 1-addressee
1-COP-DD/P

EXHIBIT 11

SPECIAL REPORT
INTERAGENCY COMMITTEE ON
INTELLIGENCE (AD HOC)

CHAIRMAN J. EDGAR HOOVER

JUNE, 1970

June 25, 1970

This report, prepared for the President,
is approved by all members of this committee
and their signatures are affixed hereto.

(Signature)

Director, Federal Bureau of Investigation
Chairman

(Signature)

Director, Central Intelligence Agency

(Signature)

Director, Defense Intelligence Agency

(Signature)

Director, National Security Agency

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PART TWORESTRAINTS ON INTELLIGENCE COLLECTION

The Committee noted that the President had made it clear that he desired full consideration be given to any regulations, policies, or procedures which tend to limit the effectiveness of domestic intelligence collection. The Committee further noted that the President wanted the pros and cons of such restraints clearly set forth so that the President will be able to decide whether or not a change in current policies, practices, or procedures should be made.

During meetings of the Committee, a variety of limitations and restraints were discussed. All of the agencies involved, Defense Intelligence Agency (DIA), the three military counterintelligence services, the Central Intelligence Agency (CIA), the National Security Agency (NSA), and the Federal Bureau of Investigation (FBI), participated in these considerations.

In the light of the directives furnished to the Committee by the White House, the subject matters hereinafter set forth were reviewed for the consideration and decision of the President.

I. SPECIFIC OPERATIONAL RESTRAINTSA. Interpretive Restraint on Communications IntelligencePreliminary Discussion

C. Mail Coverage

Preliminary Discussion

The use of mail covers can result in the collection of valuable information relating to contacts between U. S. nationals and foreign governments and intelligence services. CIA and the military investigative agencies have found this information particularly helpful in the past. Essentially, there are two types of mail coverage: routine coverage is legal, while the second--covert coverage--is not. Routine coverage involves recording information from the face of envelopes. It is available, legally, to any duly authorized Federal or state investigative agency submitting a written request to the Post Office Department and has been used frequently by the military intelligence services. Covert mail coverage, also known as "sophisticated mail coverage," or "flaps and seals," entails surreptitious screening and may include opening and examination of domestic or foreign mail. This technique is based on high-level cooperation of top echelon postal officials.

Nature of Restrictions

Covert coverage has been discontinued while routine coverage has been reduced primarily as an outgrowth of publicity arising from disclosure of routine mail coverage during legal proceedings and publicity afforded this matter in Congressional hearings involving accusations of governmental invasion of privacy.

Advantages of Maintaining Restrictions

Routine Coverage:

1. Although this coverage is legal, charges of invasion of privacy, no matter how ill-founded, are possible.
2. This coverage depends on the cooperation of rank-and-file, postal employees and is, therefore, more susceptible to compromise.

Covert Coverage:

1. Coverage directed against diplomatic establishments, if disclosed, could have adverse diplomatic repercussions.
2. This coverage, not having sanction of law, runs the risk of any illicit act magnified by the involvement of a Government agency.
3. Information secured from such coverage could not be used for prosecutive purposes.

Advantages of Relaxing RestrictionsRoutine Coverage:

1. Legal mail coverage is used daily by both local and many Federal authorities in criminal investigations. The use of this technique should be available to permit coverage of individuals and groups in the United States who pose a threat to the internal security.

Covert Coverage:

1. High-level postal authorities have, in the past, provided complete cooperation and have maintained full security of this program.
2. This technique involves negligible risk of compromise. Only high echelon postal authorities know of its existence, and personnel involved are highly trained, trustworthy, and under complete control of the intelligence agency.
3. This coverage has been extremely successful in producing hard-core and authentic intelligence which is not obtainable from any other source. An example is a case involving the interception of a letter to a _____ establishment in _____. The writer offered to sell information to _____ and enclosed a sample of information available to him. Analysis determined that the writer could have given _____ information which might have been more damaging

DECISION: Mail Coverage

- _____ Present restrictions on both types of mail coverage should be continued.
- _____ Restrictions on legal coverage should be removed.
- _____ Present restrictions on covert coverage should be relaxed on selected targets of priority foreign intelligence and internal security interest.
- _____ More information is needed.

NOTE:

The FBI is opposed to implementing any covert mail coverage because it is clearly illegal and it is likely that, if done, information would leak out of the Post Office to the press and serious damage would be done to the intelligence community. The FBI has no objection to legal mail coverage providing it is done on a carefully controlled and selective basis in both criminal and security matters.

EXHIBIT 12

20 March 1970

The Honorable J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

We have completed our review of domestic positive intelligence collection engendered by your letter of 11 March 1970. We warmly welcome periodic reexamination by our two agencies of the implementation of the 1966 agreement and the collection of positive intelligence which you proposed. I concur also with your comments that there is a need for close coordination of our efforts in the field of positive and counterintelligence collection. To be most effective, I agree that it is essential for this Agency, together with your Bureau, to conduct a continuing analysis of clandestine collection activity. The product is of growing importance to the national security and to the United States Intelligence Community. Therefore we endorse your proposal for a reexamination and bespeak your desires as to how this might be conducted.

(2) Mail Coverage. Another much needed intelligence tool is mail coverage. Its importance has been proven in the past. I have the impression that it has been discontinued, and I would suggest that our representatives should confer and examine together whether this asset might be deployed against communications of the Soviet Bloc, the New Left, and identified foreign agents.

Richard Helms
Director

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EXHIBIT 13

[Retyped from Indistinct Copy]

MEMORANDUM FOR: Director, Office of Security

ATTENTION: Deputy Director of Security (Investigations and Operational Support)

SUBJECT: Project HTLINGUAL

1. Reference is made to the Inspector General's survey of the Office of Security in December 1960 wherein a recommendation was made for the preparation of an emergency plan and cover story for the Project, HTLINGUAL. Reference is also made to memorandum dated 11 January 1962 addressed to Chief, CI Staff by the Deputy Director of Security (Investigations and Operational Support), wherein it is stated it is understood the CI Staff is engaged in the preparation of a cover story for the Project in the event it is compromised.

2. The above reference to the fact that the CI Staff is preparing a cover story for the Project in the event it is compromised may be a bit misleading. Oversimplification of the "flap potential" in this Project must be avoided, but on the other hand, unnecessary planning merely for the sake of belaboring the record must also be avoided. Yet, to assist in clarifying the thinking in the event of "flap" the following is presented.

3. At the outset of this Project the calculated risk associated with participation in this type of activity was carefully considered, and the operational decision was made that the effort was worth the risk. Events are proving the validity of that decision despite our full knowledge that a "flap" will put us "out of business" immediately and may give rise to grave charges of criminal misuse of the mails by government agencies.

4. The analysis made by the Office of Security in their memorandum of 11 January 1962 is helpful, except that it fails to recognize the "flap potential" in a possible disgruntled Postal Department employee. With that addition to the comments of the Office of Security, it may be stated that in the opinion of the CI Staff this Project could "blow" at any time for any one of the reasons stated by the Office of Security. It is quite possible that the compromise would be supported by documentary evidence in the form of items from the Project and by the naming of individuals participating in the Project. Recognizing the possibility of compromise of the Project, it becomes important that the Project files contain a record of a coordinated opinion as to what action can and/or should be taken in the event of compromise. In arriving at such a determination, it is to be noted that the surfacing of the compromise will unavoidably be in the form of a charge of violations of the mails. The charge may be levelled against Federal law enforcement agencies, U.S. Intelligence Agencies or against the Post Office Department itself. Whatever the charge, however, the burden of making a reply falls immediately upon the Post Office Department, unless some other accused organization wants to admit the violation, because the mails are in the custody of the Post Office Department.

5. Since no good purpose can be served by an official admission of the violation, and existing Federal statutes preclude the concoction of any legal excuse for the violation, it must be recognized that no cover story is available to any Government Agency. Therefore, it is most important that all Federal law enforcement and U.S. Intelligence Agencies vigorously deny any association, direct or indirect, with any such activity as charged. In the event of compromise this position should be made known immediately to the Postmaster General. He is fully knowledgeable of the Project, and the preparation of correspondence before the fact to make known our position to the Postmaster General constitutes an unnecessary security hazard in connection with the mere existence of such correspondence.

6. As to the behavior of the Post Office Department after a compromise takes place, we are hardly in a position to dictate. It might be expected, however, that they will deny the abuse of mails charged and indicate the matter is being referred to the Postal Inspection Service for investigation. Unless the charge is supported by the presentation of interior items from the Project, it should be relatively easy to "hush up" the entire affair, or to explain that it consists of legal mail cover activities conducted by the Post Office at the request of authorized Federal agencies. Under the most unfavorable circumstances, including the support of charges with teams from the Project, it might become necessary, after the matter has cooled off during an extended period of investigation, to find a scapegoat to blame for unauthorized tampering with the mails. Such cases by their very nature do not have much appeal to the imagination of the public, and this would be an effective way to resolve the initial charge of censorship of the mails.

7. A determination as to whether the compromise has been such as to preclude continuation of the Project would have to await the outcome of the compromise, even though it would undoubtedly be necessary to suspend the Project during the period of inquiry into the charges.

8. In conclusion, therefore, it is stated that in the event of compromise of the Project, HTLINGUAL, KUBARK in covert coordination with the Postmaster General will enter a general denial to any and all charges, as may be necessary, and will avoid comment in deference to the Post Office Department if possible.

Deputy Chief
Counter Intelligence Staff

Prepared by:
CIA officer: ja 1 feb 62

Distribution:

Orig & 1 - addressee
1 - CI-Project/
1 - file

EXHIBIT 14

23 July 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Discussion with Attorney General Mitchell on
Domestic Intelligence

1. During a private meeting with the Attorney General on 27 July 1970, it became clear, to my great surprise, that he had heard nothing whatever about the President's instructions on "Domestic Intelligence" until that very morning. In other words, the Attorney General had not been told of the meeting at the White House on 5 June 1970 or of the ad hoc committee meetings chaired by the FBI which had followed or about the report which was sent to the President around 1 July, setting forth constraints on domestic intelligence collection. As I understand it, the Attorney General first heard about these matters when the Director of the FBI complained to him about a memorandum from Mr. Tom Charles Huston which must be essentially the same text as the one I received under date of 23 July 1970 (#SC 06875-70).
2. I told the Attorney General that we had put our backs into this exercise, because we had thought that he knew all about it and was behind it. The Attorney General was frank with me. In addition, he said that he had told Mr. Hoover to "sit tight" until he (the Attorney General) had an opportunity to discuss this whole matter with the President upon his return to Washington from San Clemente next week.
3. In connection with the problems involved in domestic intelligence collection, I again suggested to the Attorney General that he have a talk with Mr. Ben J. Papich who, I pointed out, has now fully retired from the FBI. The Attorney General again wrote down Mr. Papich's name.

Richard Helms
Director

Distribution:

Orig - FBI's file
1 cc - EM W/SC 06875-70

EXHIBIT 15

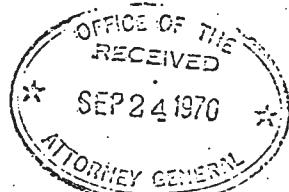
THE WHITE HOUSE
WASHINGTON

September 18, 1970

~~TOP SECRET~~

MEMORANDUM FOR

THE ATTORNEY GENERAL



Pursuant to our conversation yesterday, September 17, 1970, I suggest the following procedures to commence our domestic intelligence operation as quickly as possible.

1. Interagency Domestic Intelligence Unit. A key to the entire operation will be the creation of a interagency intelligence unit for both operational and evaluation purposes. Obviously, the selection of persons to this unit will be of vital importance to the success of the mission. As we discussed, the selection of the personnel for this unit is an appropriate first step for several reasons. First, effective coordination of the different agencies must be developed at an early stage through the establishment of the unit. Second, Hoover has indicated a strong opposition to the creation of such a unit and, to bring the FBI fully on board, this seems an appropriate first step to guarantee their proper and full participation in the program. Third, the unit can serve to make appropriate recommendations for the type of intelligence that should be immediately pursued by the various agencies. In regard to this third point, I believe we agreed that it would be inappropriate to have any blanket removal of restrictions; rather, the most appropriate procedure would be to decide on the type of intelligence we need, based on an assessment of the recommendations of this unit, and then to proceed to remove the restraints as necessary to obtain such intelligence.

To proceed to create the interagency intelligence unit, particularly the evaluation group or committee, I recommend that we request the names of four nominees from each of the intelligence agencies involved. While the precise composition of the unit may vary as we gain experience, I think that two members should be appointed initially from each agency in addition to your personal representative who should also be involved in the proceedings. Because of the interagency aspects of this request, it would probably be best if the request came from the White House. If you agree, I will make a request of the agency.

heads; however, I feel that it is essential that you work this out with Hoover before I have any dealings with him directly.

2. Housing. We discussed the appropriate housing of this operation and, upon reflection, I believe that rather than a White House staffer looking for suitable space, that a professional intelligence person should be assigned the task of locating such space. Accordingly, I would suggest that a request be made that Mr. Hoover assign an agent to this task. In connection with the housing problem, I think serious consideration must be given to the appropriate Justice Department cover for the domestic intelligence operation. We discussed yesterday using IDIU as a cover and as I indicated I believe that that is a most appropriate cover. I believe that it is generally felt that IDIU is already a far more extensive intelligence operation than has been mentioned publicly, and that the IDIU operation cover would eliminate the problem of discovering a new intelligence operation in the Department of Justice. However, I have reservations about the personnel in IDIU and its present operation activities and would suggest that they either be given a minor function within the new intelligence operation or that the staff be completely removed. I have had only incidental dealings with the personnel, other than Jim Devine, and cannot speak to their discretion and loyalty for such an operation. I do not believe that Jim Devine is capable of any major position within the new intelligence operation. However, I do believe that he could help perpetuate the cover and he has evidenced a loyalty to you, the Deputy and other key people in the Department of Justice, despite his strong links with the prior Administration. I would defer to your judgement, of course, on any recommendation regarding Jim Devine's continued presence in such an intelligence operation.

3. Assistant to Attorney General. We also discussed the need for you to have a right hand man to assist in running this operation. It would seem that what is needed is a man with administrative skills, a sensitivity to the implications of the current radical and subversive movements within the United States, and preferably, some background in intelligence work. To maintain the cover, I would think it appropriate for the man to have a law degree in that he will be a part of the Department of Justice. You suggested the possibility of using a prosecutor who had had experience with cases of this type. Accordingly, I have spoken with Harlington Wood to ask him to submit the names of five Assistant U. S. Attorneys who have had experience in dealing with demonstrations or riot type cases and who are individuals that might be appropriately given a sensitive

-3-

assignment in the Department of Justice. I did not discuss the matter in any further detail with Woolf other than to request the submission of some nominees. I would also like to suggest that we request names from the various intelligence agencies involved for personnel that might be appropriately involved in this activity or who might serve as your assistant.

In summary, I recommend the following immediate action:

- (1) You meet with Hoover, explain what must be done, and request his nominees for the interagency unit.
- (2) You request that Hoover assign an agent to the task of locating appropriate housing for the operations..
- (3) I request that other involved intelligence agencies submit nominees for the interagency unit.
- (4) I request from the agencies names of appropriate personnel for assignment to the operation.

Finally, I would suggest that you call weekly meetings to monitor the problems as they emerge and to make certain that we are moving this program into implementation as quickly as possible..



JOHN DEAN

N.B. Bob Haldeman has suggested to me that if you would like him to join you in a meeting with Hoover he will be happy to do so.

Source has furnished complete subscription lists of various communist publications, including and other leading communist publications which are published in In this regard, source furnishes identities of those individuals residing in the U.S. who act as agents for these communist publications.

Source still continues to furnish up-to-date news concerning American citizens who have pro-communist sympathies residing in some way are employed by the Government and in particular, the source was able to locate the current whereabouts of one espionage subject who has been missing This source continues to furnish pertinent information also relative to the activities and writings of .

This source continually furnishes the identities of many U.S. citizens who have violated the U.S. passport laws by having actually traveled to and throughout .

Source continually identifies certain U.S. scientists who are on friendly terms with U.S. educated scientists who have since returned to and at the same time, makes available certain requests which these scientists make of their scientific friends in the U.S. In certain instances, the Bureau has been able to develop potential double agents in the security field, because of these requests made by these scientists and in particular, San Francisco makes reference to the case of a research chemist for It also assesses in evaluating the reliability of double agents as in the case of .

In this case, this source has been able to corroborate information which has furnished the Bureau.

In the counterintelligence field, this source continues to monitor correspondence to one who resides in it being pointed out that was alleged to be an actual agent for the which is a communist front.

Considerable data has been gathered concerning pro-communist organizations on the part of U.S. Government employees, their training, the funds and the funds to update the CPUSA chapter.

This source enables San Francisco to keep up with the current residences and employments of various San Francisco agents; and SI subjects and at the same time, source furnishes the viewpoints which these subjects have concerning as well as their anti-US statements which they have made.

Source has uncovered the whereabouts of a Selective Service subject of the San Francisco Division, namely, who recently graduated from the University of after being missing from the San Francisco area for several years.

In other instances, this source has revealed several security subjects to be now residing and attending institutions of higher learning even though US passports for these individuals have not been issued.

Source has identified certain U.S. scientists who have traveled to to attend various scientific conferences there. During these conferences, some of these U.S. scientists have become quite friendly with scientists and have initiated correspondence. Although some of these U.S. scientists have been contacted by the field relative to their willingness to cooperate in the double-agent field, San Francisco has no knowledge concerning the outcome.

Source still continues to furnish pertinent information relating to various subjects which information has been disseminated. Many of the U.S. educated scientists have been approached by to act as double agents.

Source continually shows the techniques and pressure put on scientists remaining in the U.S. in order to force them to return to and work for the motherland. In this regard, source has given the U.S. valuable information concerning the advancement which the communists have made in certain scientific fields.

Source still continues to identify numerous U.S. citizens who are in contact with various communist publishing firms.

It has also furnished correct names, which reflect that individuals are residing in the U.S. fraudulently and has also furnished papers for individuals to use. It has also furnished data as to the finances may be used to support their claim to the U.S. and has also furnished info of their relatives to the names of the individuals are and to leave which has been of assistance in evaluating the information by the agents, furnished during the course of interviews by the agents.

Numerous potential security informants have been developed due to the type of information which this source has furnished in San Francisco.

Upon receipt of the translations of the material which is forwarded to the Bureau, as well as an evaluation made of the English language material, which is photostated, San Francisco furnishes to the other field divisions only that material which can be construed as having intelligence value. In many instances, San Francisco has knowledge concerning the identities of security subjects residing within other field divisions and furnishes pertinent data concerning these individuals. Numerous requests are made by certain scientists to forward to them certain technical books and publications in the scientific field which information is also furnished to other field divisions.

In the case of traveling throughout who may possibly be U.S. citizens, this data is also furnished to other offices.

At this time, this source, as a general rule has access to all mail emanating from destined for the U.S.; however, on certain occasions, this source, due to the routing of mail by the Post Office from the Airport, sometimes misses certain mail bags.

For the Bureau's information, San Francisco processes approximately 13,500 first class letters a day not including third class publications. In this connection, however, it is noted that the processing must be done in a very limited time, two hours maximum. Furthermore, in view of the existing limitations, the quantity of material chosen for complete translation is necessarily limited to no more than 50 per day, some of which as further time permits for a closer scrutiny, is later disregarded and no further action taken, other than returning the material to the source.

EXHIBIT 17



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 5, 1973

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

(A) CONDUCT AND ACTIVITIES OF EMPLOYEES -- In consideration of recently exposed events and the resultant atmosphere of public concern for the protection of individuals' rights to privacy, I feel it advisable to point out to you the continuing need to assure that citizens be given full recognition of their Constitutional rights and privileges.

As members of a Federal investigative agency, FBI employees must at all times zealously guard and defend the rights and liberties guaranteed to all individuals by the Constitution. Therefore, FBI employees must not engage in any investigative activity which could abridge in any way the rights guaranteed to a citizen of the United States by the Constitution and under no circumstance shall employees of the FBI engage in any conduct which may result in defaming the character, reputation, integrity, or dignity of any citizen or organization of citizens of the United States.

Fundamental to all investigations by the FBI is the need to protect the Constitutional rights of our citizens while still thoroughly and expeditiously discharging those responsibilities with which it is charged by statutes and Directives of the President and the Attorney General.

These principles must be kept in mind by you at all times. Again, the spirit as well as the letter of the law is our goal.

Clarence M. Kelley
Director

12/5/73
MEMORANDUM 56-73

EXHIBIT 18

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : MR. W. C. SULLIVAN

DATE: October 2, 1964

FROM MR. D. E. MOORE

cc

SUBJECT: ESPIONAGE -

Prior memoranda have advised of the starting of the trial of the illegal agents in this case, Mr. and Mrs. Robert K. Balth, in the Eastern District of New York and motions by defense counsel regarding the nature of evidence to be submitted in this case.

The Judge originally denied the motions, but Assistant Attorney General Yeagley has advised that USA Hoey in answering questions by the Judge gave answers which were too broad and which the Government cannot support and therefore it is necessary for the Government to make additional statements to Judge Dooling who is sitting in this case in the Eastern District of New York. My memorandum of September 30, 1964, advised that while we were not aware of the contents of the conversations between USA Hoey and Judge Dooling, we had no objections to Yeagley's proposed amending statement as it was correct.

Subsequently on the afternoon of 10-1-64, Departmental Attorneys Thomas K. Hall and Kevin Maroney advised Supervisor and myself that USA Hoey's statement to Judge Dooling was unfortunate because it was too broad. They believe that the Judge's query pertained to any tainted source at the Balth residence and was confined to eavesdropping devices, but that Hoey in his answer had not confined the answer to the residence or to eavesdropping, either of which would perhaps have prevented the current problem. (No information obtained from wiretaps or microphones is contemplated to be used in this case and the only tainted source is a mail intercept which did not take place anywhere near the residence).

Subsequently on the evening of 10-1-64, Mr. Hall advised that he had just learned that apparently Hoey in his discussions with the court had stated, or at least indicated, there was no microphone involved in this case and, of course, this was incorrect and the Department felt the record had to be corrected. He

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At 3

EX-117

OCT 19 1964

MR. SULLIVAN - MR. MOORE
JAW: ESPIONAGE

asked if the Bureau had any objection and was advised in the negative. This morning Mr. Hall called to advise that USA Hoey had now requested advice as to what answer could be given the court should he be asked (1) if there was a wiretap involved in this case and (2) if there was a mail intercept in this case. After checking, I called Hall back and said that we would leave the answer to #1 up to the Department, but that if the Department saw necessary, the Bureau would not object. However, with regard to #2, under no circumstances is the Bureau willing to admit that a mail intercept was utilized and Hall said he would pass this information on to Hoey and Assistant Attorney General Yeagley who is in New York.

~~It has been advised that in view of the above developments, the Bureau will not assume any mail intercept in this case.~~
Hall advised that he had discussed this case with Acting Attorney General Katzenbach this morning and Katzenbach was of the opinion that the Department must be candid with the Judge. He said Katzenbach recognized the problems, but felt that in view of the value of the case, an effort should be made to go ahead with the trial even if it might be necessary drop the overt act where our tainted source is involved, and proceed on a general conspiracy basis with the recognition that the verdict might be against us, but we would have revealed the Soviet espionage activities to the people. Hall said he was passing on the Acting Attorney General's comments to Assistant Attorney General Yeagley. Hall said that the motions of defense counsel and the complications with regard to the answers may eventually force the Government to drop the prosecution. He said in view of the many facets involved, he did not feel there was any reason to agree to a pre-trial hearing on the issue of tainted source if this should be required by the court, and rather than do this, they are prepared to drop the espionage charges and attempt to proceed on lesser grounds.

ACTION

SAC NYO, was advised of the above developments and requested to keep in close touch with Yeagley in New York and you will be kept advised of developments.

EXHIBIT 19

G-2 Form No. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Tolson

DATE: 2/27/65

FROM : A. H. Belmont

SUBJECT: THE LONG COMMITTEE

The Attorney General called on the morning of February 27, 1965, to advise he wanted to consult with the Bureau on certain problems raised by the Long Committee, which is exploring the use of mail covers, et cetera. He noted there was a possible problem concerning [Chief Inspector Montague's testimony] and whether it was necessary for [Montague] to change his testimony. Also, he felt that Internal Revenue Service had been using investigative techniques which they should not use and this could pose a problem. He said that the President had asked him to coordinate with all executive agencies concerning the problems raised by the Long Committee.

Inspector Moore and I met with the Attorney General in his office this afternoon. Mr. Courtney Evans was present. I told the Attorney General that in [Montague's testimony] he was told by Attorney Fensterwald that if any of the questions had national security implications [Montague] should not answer them. Consequently, [Montague] was estopped from doing other than answering in the negative when asked questions touching on national security. With this interpretation, it was questionable whether an attempt should be made to change or explain Montague's testimony.

I made it clear to the Attorney General that from our dealings with [Montague], he was a man of integrity and sacrificed his personal desires for the welfare of the country and had cooperated fully with us. The Attorney General said he had no intention of changing one word of [Montague's testimony], but he was considering advising Long and Fensterwald that there were extreme delicate national security matters touching on the areas being covered by the committee and there could be exceptions to the answers given in the testimony when they touched on such sensitive security matters. He said further that he contemplates seeing Senator Long and impressing on him that the committee would not want to stumble by mistake into an area of extreme interest to the national security as they nearly did in a matter

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page 2

Memorandum to Mr. Tolson
Re: The Long Committee

affecting CIA.

Katzenbach contemplates asking for a list of the witnesses who will appear before the committee together with a brief summary of the expected testimony. On the basis of this, he will be able to advise Senator Long when he should steer clear of a sensitive area.

I told Mr. Katzenbach that I certainly agree that this matter should be controlled at the committee level but that I felt pressure would have to be applied so that the personal interest of Senator Long became involved rather than on any ideological basis. Mr. Katzenbach said that he had already talked to Vice President Humphrey about Fensterwald, and that Humphrey had promised to talk to Long concerning Fensterwald. Katzenbach said that in addition to the Vice President he might have to resort to pressure from the President himself, although he would prefer to work it out without resorting to the President. He indicated there was no one on the committee itself who could be helpful.

Mr. Katzenbach said that he expected trouble from the possible activities of IRS and the military in the investigative field; that if some of these matters are uncovered before the committee they will tend to undermine the restricted and tightly controlled operations of the Bureau. I told him that our operations are tightly controlled and particularly in the delicate areas of concern, we restrict ourselves to important security matters.

Mr. Katzenbach said he was going to see Senator Long on Monday and wanted to know if the Bureau would like someone to go along with him. I told him no.

ACTION:

Mr. Katzenbach said he would advise us of the results of his conversation with Long. He also asked that I advise the Director of our discussion and I told him I would.

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FBI

Memorandum to Mr. Tolson
Re: The Long Committee

I called Mr. DeLoach and briefed him on this problem in order that he might contact Senator Eastman in an effort to warn the Long Committee away from those areas which would be injurious to the national defense. (Of course I made no mention of such a contact to the Attorney General.) Mr. DeLoach advised that Senator Eastman is in Mississippi and he will contact him upon his return Monday.

J
I don't see what all the excitement is about. I would have no hesitancy in discontinuing all telephone - technical conversations, wire phones, hash copies, mail copies etc. While it might handicap us, I doubt they are as valuable as some believe & more important than being used to justify them.

EXHIBIT 20

8:40 AM

March 2, 1965

Re: wiretapping & dictating -

MEMORANDUM FOR MR. TOLESON
 MR. BELMONT
 MR. GALE
 MR. ROSEN
 MR. SULLIVAN
 MR. DE LOACH

The Attorney General called and advised that he had talked to Senator Long last night. Senator Long's committee is looking into mail covers, et cetera. The Attorney General stated he thought somebody had already spoken to Senator Long; as he said he did not want to get into any national security area and was willing to take steps not to do this. The Attorney General stated that Mr. Fensterwald was present for part of the meeting and Fensterwald had said that he had some possible witnesses who are former Bureau Agents and if they were asked if mail was opened, they would take the Fifth Amendment. The Attorney General stated that before they are called, he would like to know who they are and whether they were ever involved in any program touching on national security and if not, it is their own business, but if they were, we would want to know. The Attorney General stated the Senator promised that he would have a chance to look at the names if he wanted to, personally and confidentially, and the list would have any names involving national security deleted and he would tell the Senator how many but no more.

The Attorney General stated that the Postmaster General is going down there this morning himself which he, the Attorney General, thought would be helpful to Chief Inspector Montague of the Post Office Department.

The Attorney General stated that Senator Long also said he is not going to propose legislation to abolish mail covers as he thought they served a useful purpose but he also thinks that control should be tightened. I stated I thought there was great laxity in the matter of mail covers and the matter of tapping telephones.

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 Callahan _____
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 Felt _____
 Gale _____
 Rosen _____
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 Tolson _____
 Belmont _____
 Mohr _____
 Holmes _____
 Gandy _____
 MAIL ROOM TELETYPE UNIT

March 2, 1965

Memorandum for Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, DeLoach

there would then be in one place a list of all phone taps and the purpose and reason for them. I stated that it is a fact, insofar as I am concerned, that I am the only head of an agency who does not have authority to tap telephones. I stated that I know that subordinates down the line in some agencies will tap phones without the knowledge of the chief of the agency and there is grave suspicion in Washington by some newspapermen that their phones have been tapped by agencies of the Government trying to find out where they are getting their information. I stated I have always been opposed to the law whereby it is necessary to get the authority of a court to tap phones because of the composition of some of our courts and the employees thereof, but I have always felt that the President should issue an Executive Order confidentially to all agencies that all phone tapping be discontinued except when specifically approved by the Attorney General so there would be in one place a list and then if any committee in Congress got on the warpath, the Attorney General would have a list he could vouch for as being the only phones tapped by the Government. The Attorney General stated that made sense. I stated many agencies are opposed because they realize there would be a marked restriction. I stated we only have 45 phone taps, which is a low number for a country the size of ours and the area we have to cover. The Attorney General stated no one has any idea how many phone taps the whole Government has.

I stated there is also a school being conducted in California by a private organization which instructs the Treasury Department and the Internal Revenue Service in the matter of phone tapping and they have sent their own personnel there to be trained. I stated Internal Revenue has also from time to time hired private outside phone tappers to do their tapping. I stated it is that type of thing if there were a real investigation which would come out. The Attorney General commented that he would not guarantee some of it won't come out. I stated I was amazed when I learned of the school in California as I saw a reference to it in the newspaper and wanted to know what it was and what officers attended. I stated we have our own instructors and do it ourselves.

I stated I thought the Attorney General had made good headway with Senator Long. The Attorney General stated he thought it would be helpful, [redacted]

- 2 -

REC'D

OCT 1 1965

FBI

March 2, 1965

Memorandum for Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, DeLoach

The Attorney General stated the Senator said he did not want to get into this and he would give him, the Attorney General, the names and a summary of the testimony and told Fensterwald to do so, but he, the Attorney General, can't say Fensterwald is going to do it but he will on some but he did not know that he would or not.

The Attorney General stated that Senator Eastland may have already talked to Senator Long or else the Vice President, but somebody had waked him up. I stated Senator Eastland said he would do it Wednesday, but he may have called him.

The Attorney General stated that is where it stands now and we shall see what happens.

Very truly yours,

J. E. H.

John Edgar Hoover
Director

RE

SENT FROM D. O.
TIME 1145 AM
DATE 3-2-65

[Handwritten signature]

OCT 10 1965

EXHIBIT 21

20 January 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Operational Aspects of KESOURDOUGH
San Francisco, California

1.

2. This memorandum will deal only with three KESOURDOUGH entries in which Far East Division participated, as follows:

A. February 1970: Several TSD officers, one Hqs Office of Security representative, one SF Office of Security armed escort, and two Far East Division officers examined mail

from the Far East in the postoffice during non-working hours in the presence of the postal inspector. Some pieces of mail were removed, taken to a secure location, opened, examined, photographed and returned to the mail flow during the subsequent night's examination of later mail. The removal of the mail was done without the knowledge of the postal inspector.

B. May 1970: Five TSD officers, one Hqs Office of Security representative, one SF Office of Security armed escort, and four Far East Division officers repeated the operational tasks outlined above for February 1970.

C. October 1971: Three TSD officers, one Hqs Office of Security officer, one SF Office of Security armed escort, and four Far East Division officers repeated the operational tasks outlined above for February and May 1970.

3. In all of the above, team members were briefed by the TSD team chief and senior members of the Office of Security prior to departure from Hqs. The TSD team chief, the Office of Security Hqs officer and in 3 C above one FD officer traveled to San Francisco in advance of the team to meet the postal authorities to arrange access to the incoming mail to the U.S.

Declassified by 007789
10 Dec 75

Another team of experts arrived later and stayed in Main Post Office, in proximity to the post office. The postal inspector informed the team of experts on 6-7-71 on arrival of the mailbag and again when the FBI had arrived in order that the team could be at the post office to meet the Inspector who had obtained the mailbag/s from the Airport Facility. The Inspector unlocked the post office and made space available to the team to handle the mail.

The Inspector then locked his office and the post office and left the building, the team departing.

4. Details re the removal to the secure location lifting of some items of mail and are as follows:

a. Items were selected based on bulk of mail to be processed.

b. When the postal inspector was otherwise occupied, the letter chosen would be secreted in a special panel in the equipment bay or in the large handbag of a team member.

c. When the team departed from the post office, at least two vehicles were used, proceeding to the motel's where the team members left. The equipment, including the letters and exposed files, was then taken by more team members to the secure location.

c. Security armed escort remained with the team until all of the preceding had been accomplished.

5. The following day, the team arrived at the secure location to process the files and work on the letters that had been received. The letters were opened, examined and sealed.

These letters were then submitted to the FBI as:

Declassified by 007789
16 Oct 75

not made available by the postal inspector. No mail was received on the first night since it could not be sent due to the 9-11 Blow.

6. During the February 1970 entry and team presence in San Francisco, the Inspector made a bag of outgoing mail available. The mail was photographed so that upon return to Hqs a log from the envelopes could be made regarding origin and destination for possible pattern use.

7. During the May 1970 entry and team presence in San Francisco, the Inspector also made available numerous items of surface mail coming from the Far East to the USA. This was casually examined at the postal facility.

Declassified by: 001789
16 Oct 75

EXHIBIT 22

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : MR. A. H. BELMONT

DATE: March 10, 1961

FROM : MR. D. E. MOORE

SUBJECT: HUNTER
ESPIONAGE - R

Hunter is CIA's sensitive project involving the review of mail going to the CIA makes available to us results of their analysis relative to this project.

On 3-9-61 during a conference on illegal espionage activities between Special Agents and Messrs. Angleton, of CIA, we were advised that CIA has now established a laboratory in New York in connection with this project which can examine correspondence for secret writing, micro-dots and possibly codes. He said the laboratory is fully equipped and they would be glad to make its facilities available to us if at any time we desire an examination of this nature to be made in NYC and time was of the essence and would not permit the material to be brought to our laboratory in Washington, D.C. We expressed our appreciation for the offer and said that in the event we desired to utilize their laboratory, we would contact them.

ACTION: For information.

(7)

another move!

SA advised 4/19/61
that Hunter made a
well informed agent
2019 since NY
now at CIA
4/19/61

Classified by *EDM*
Exempt from GS classification
Date of classification indefinite

REC-22

MAR 23

89 MAR 23 1961

EXHIBIT 23

OPTIONAL FORM NO. 10
MAY 1963 EDITION
GSA GEN. REG. NO. 17

UNITED STATES GOVERNMENT

Memorandum

TO : W. A. Branigan

DATE

August 24, 1966

FROM : M. E. Triplett

SUBJECT

From 8-14-65 through 8-13-66, 3028 Hunter Reports transmitting 6077 items were received from
This is a slight increase (almost 3%) in number of items over the previous year.

Although items were received on a continuous basis, the number dropped during the period of August, 1965, through January, 1966. This is believed to be due to the reorganization, transfer of personnel and change in supervision over the Hunter Project at CIA which was taking place during this time.

From February, 1966, to the present, there has been a marked increase in number of items received. The average for the past four months has been 627 per month, whereas the average for the same period last year was 421. There has been no significant change in the type of material except that more items are being received regarding subjects on whom the source has not furnished information previously, necessitating more research. The value of this material is shown by the fact that there was an increase of 53% in number of new cases opened on the basis of information furnished by the source.

Approximately 580 letters were written on information furnished by during the past year. This is an increase of approximately 9% over those written the previous year. More than 260 new cases were opened and 36 cases were reopened. The majority of new cases were opened on the basis of travel to the and contacts of U.S. citizens, Latin Americans and in the U.S. with individuals in the Information was sent to the field to assist in pending investigations and for information. In some cases, data was extracted from several items, summarized and sent to the field in one communication under more than one caption to show relationships between various subjects.

An analysis of information received from the source during the past year is attached.

~~ENCLOSURE~~ ~~ACTION~~ Classified by EX-110 EX-110
Exempt from GPS, Category REC 5
Date of Declassification Indefinite

EN
REF ID: A65245
Date of Declassification Indefinite
None. This is for your information. SEP 12 1968

INFORMATION RECEIVED FROM

Data received regarding the following current and former double agents and sources has been utilized to evaluate their reliability:

The field has been advised of individuals in close contact with the request to consider for development as sources.

Information regarding exchange students (eight are agents) includes names of associates, activities, travel, types of material requested to obtain and individuals with whom they continue to maintain contact after they leave the U.S. Similar information is furnished regarding other in the U.S. as a result of the exchange program. Material is also furnished regarding U.S. citizens who travel to the as part of the exchange.

Data regarding current and former U.S. exchange students shows and U.S. contacts before and after return, romantic involvements, sympathies and difficulties encountered in A former exchange student has been in contact with a suspected espionage agent regarding (according to) the has to attempt recruitment of . The source has revealed former exchange student travel plans and continue contacts with (one is son of an espionage agent) and attempts to obtain a divorce in order to marry a girl. Similar information is furnished regarding U.S. citizens who are, or have been, in but are not under the exchange program. These include Two of the four U.S. citizens who have applied for entrance to universities have stated that they desire to become citizens. using an alias in her correspondence. Another went to before he left for the

Material has been received regarding three employees of USIA, two U.S. citizens employed by the UN, a Federal employee who intends to marry a girl, three individuals involved with women and two U.S. contacts of who has compromised Americans in the past).

Contacts of foreign exchange students and aliens in the U.S. from

with their friends in the who are studying at University or other schools show that

they may be communists. Two foreign students and an exile from have been acting as intermediaries. Several have applied for admittance to University and other schools in the because of finances or ideology. A Marxist in the U.S. is acting as an intermediary for an individual at University by forwarding mail to Data is furnished regarding foreign students who attended school in the and are now in the U.S. One of these appears to have been compromised before he left and another brought his wife to the U.S.

Items are received regarding who have entered the U.S. as wives of Americans: who has advised that she was approached by ; intelligence when in the in 1965; wife of an politician and newspaperman, who has become involved with a born U.S. Army Captain. The source advised of contacts, travel and study in the Soviet wife of former U.S. Naval Attache, who has admitted furnishing information regarding Americans to the in the 1940's.

Much material has been furnished regarding U.S. citizens' travel plans, including those of known subversives, their relatives and contacts and difficulties encountered by two tourists with authorities. Data has been received regarding and former U.S. citizens who have traveled, or intend to travel, to the U.S., their contacts, activities and relatives. Several had renounced their U.S. citizenship and had been engaged in questionable activities in the past. who recently returned to the U.S., has had numerous contacts with known subversives, at least two of whom were connected with espionage in the past. Material is received on U.S. defectors now in the

Additional information received includes: plans of seven individuals to repatriate to the U.S. contacts with current and former known and suspected agents now in the

and others); activities and contacts of current and former known and suspected espionage agents now in the U.S.

(suspected of working as black market currency operator for and continuation of his contacts by his wife; activities of (suspect in case) family; contacts of who has been in contact with a officer; contacts and travel of who, according to was to be approached by contacts of (widow of with agent, travel to as a guest of organization to receive her husband's archives and her illness in the contact of

SECRET who was attending the with individual in U.S. contacts of several defectors and repatriates,

such as One of contacts is believed to be a target for contact by and another is the son-in-law of the woman in whose apartment had been visiting. is a defector who recently committed suicide. The informant has advised of the activities and contacts of defector to Sweden in 1962. The Bureau was not aware previously that was in the U.S.

Although much material regarding communists and the Communist Party (CP) is also received from other sources, the informant continues to furnish additional details and new information regarding changes of employment and residence, travel, contacts and activities. Data regarding attempts of the DuBois Clubs to expand nationally and internationally was furnished in items on International Secretary, who went to the to marry a if he can obtain a divorce. Items pertaining to (daughter of CP leader) told of the birth of her daughter, reconciliation with her husband, plans to go to Cuba to live and that one of her friends, a Security Index subject, was in Ghana when she was believed to be in the U.S.

Data is received regarding travel and contacts of (widow of suspected espionage agent), who attended the Information continues to be received regarding her son, who was allegedly studying ballet but actually attended the above school for almost two years. This has involved his contacts, change of employment and residence and racial, poverty and Progressive Labor Party activities in Chicago. One of his contacts now at this school has been identified as son of Canadian communists. The source has also advised that and three unidentified individuals plan to study dancing in this summer (possibly at the above-mentioned school which maintains a special section to combine lessons in dancing and indoctrination) and that (son of CP official), who went to the with a musical and dancing group, remained in to attend school. son of the alien wife of a U.S. citizen residing in State of Washington, is attending school in He is believed to be from the U.S. or Canada.

Additional information is received regarding persons involved in the peace movements, anti-Vietnam demonstrations, women's organizations, "teach-ins" (one has been in contact with a officer), racial matters, Progressive Labor Party, Students for a Democratic Society, DuBois Clubs, Students Non-Violent Coordinating Committee and other organizations. Items reveal names of U.S. contacts with members of such propaganda organizations as the and others.

EXHIBIT 24

F B I

Date: 5/25/65

To: mit the following in _____
(Type in plain text or code)Via AIRTEL AIR MAIL - REGISTERED
(Priority or Method of Mailing)TO: DIRECTOR, FBI ATTENTION: FBI LABORATORY
FROM: SAC, SAN FRANCISCO (P)

CONFIDENTIAL SOURCE -

As of May 26, 1965, contact with Source will be temporarily suspended in view of discontinuance of Post Office examination of first-class mail originating in as a result of the Supreme Court decision of May 24, 1965.

Bureau will be promptly advised when arrangements have been perfected to recontact this Source.

3 - Bureau (AM - RM)
1 - San Francisco

(P)

Declassified by 1985

REC-42

1 MAY 27 1965

Approved: John G. ... Sent: _____ M Per: _____
Special Agent in Charge

EXHIBIT 25

381 U.S. 301 LAMONT v. POSTMASTER GENERAL OF UNITED STATES 1493

Cite as 35 S.Ct. 1493 (1965)

U.S. 415, 422-423, 85 S.Ct. 1074; *Henry v. Mississippi*, *supra*. It should provide for full fact hearings to resolve disputed factual issues, and for compilation of a record to enable federal courts to determine the sufficiency of those hearings. *Townsend v. Sain*, *supra*. It should provide for decisions supported by opinions, or fact findings and conclusions of law, which disclose the grounds of decision and the resolution of disputed facts. Provision for counsel to represent prisoners, as in § 4 of the Nebraska Act, would enhance the probability of effective presentation and a proper disposition of prisoners' claims.

But there is no occasion in this case to decide whether due process requires the States to provide corrective process. The new statute on its face is plainly an adequate corrective process. Every consideration of federalism supports our conclusion to afford the Nebraska courts the opportunity to say whether that process is available for the hearing and determination of petitioner's claim.

tion of unsealed mail matter constituting communist political propaganda from foreign countries. In one case, No. 491, the United States District Court for the Southern District of New York, 229 F. Supp. 913, dismissed the complaint, and in the other case, No. 848, the United States District Court for the Northern District of California, Southern Division, 236 F.Supp. 405, entered judgment holding statute unconstitutional, and in both cases probable jurisdiction was noted. The Supreme Court, Mr. Justice Douglas, held that statute requiring post office department to detain and destroy unsealed mail from foreign countries determined to be communist political propaganda unless addressee returns a reply card indicating his desire to receive such piece of mail is unconstitutional as requiring an official act, i. e., return of card, as a limitation on unfettered exercise of addressee's First Amendment rights.

Judgment in No. 491 reversed and judgment in No. 848 affirmed.



381 U.S. 301

Corliss LAMONT, dba Basic Pamphlets,
Appellant,

v.

POSTMASTER GENERAL OF the
UNITED STATES.

John F. FIXA, Individually and as Post-
master, San Francisco, California,
et al., Appellants,

v.

Leif HEILBERG.

Nos. 491 and 848.

Argued April 26, 1965.

Decided May 24, 1965.

Actions to enjoin enforcement of
statute relating to detention and destruc-

1. Constitutional Law ☞82

Post Office ☞14

Statute requiring post office department to detain and destroy unsealed mail from foreign countries determined to be communist political propaganda unless addressee returns a reply card indicating his desire to receive such piece of mail is unconstitutional as requiring an official act, i. e., return of card, as a limitation on unfettered exercise of addressee's First Amendment rights. Postal Service and Federal Employees Salary Act of 1962, § 305(a), 39 U.S.C.A. § 4008(a); U.S.C.A. Const. Amend. 1.

2. Constitutional Law ☞90

United States may give up post office when it sees fit, but while it carries it on, use of mails is almost as much a part of free speech as right to use our tongues. U.S.C.A. Const. Amend. 1.

Leonard B. Boudin, Washington, D. C., for appellant in No. 491.

Archibald Cox, Sol. Gen., for appellee in No. 491 and appellants in No. 848.

Marshall W. Krause, San Francisco, Cal., for appellee in No. 848.

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Mr. Justice DOUGLAS delivered the opinion of the Court.

These appeals present the same question: is § 305(a) of the Postal Service and Federal Employees Salary Act of 1962, 76 Stat. 840, constitutional as construed and applied? The statute provides in part:

"Mail matter, except sealed letters, which originates or which is printed or otherwise prepared in a foreign country and which is determined by the Secretary of the Treasury pursuant to rules and regulations to be promulgated by him to be 'communist political propaganda', shall be detained by the Postmaster General upon its arrival for delivery in the United States, or upon its subsequent deposit in the United States domestic mails, and the addressee shall be notified that such matter has been received and will be delivered only upon the addressee's request, except that such detention shall not be required in the case of any matter which is furnished pursuant to subscription or which is otherwise ascertained by the Postmaster General to be desired by the addressee." 39 U.S.C. § 4008(a).

1. "The term 'political propaganda' includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party

The statute defines "communist political propaganda" as political propaganda (as that term is defined in § 1(j) of the Foreign Agents Registration Act of 1938¹) which is

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issued by or on behalf of any country with respect to which there is in effect a suspension or withdrawal of tariff concessions or from which foreign assistance is withheld pursuant to certain specified statutes. 39 U.S.C. § 4008(b). The statute contains an exemption from its provisions for mail addressed to government agencies and educational institutions, or officials thereof, and for mail sent pursuant to a reciprocal cultural international agreement. 39 U.S.C. § 4008(c).

To implement the statute the Post Office maintains 10 or 11 screening points through which is routed all unsealed mail from the designated foreign countries. At these points the nonexempt mail is examined by Customs authorities. When it is determined that a piece of mail is "communist political propaganda," the addressee is mailed a notice identifying the mail being detained and advising that it will be destroyed unless the addressee requests delivery by returning an attached reply card within 20 days.

Prior to March 1, 1965, the reply card contained a space in which the addressee could request delivery of any "similar publication" in the future. A list of the persons thus manifesting a desire to receive "communist political propaganda" was maintained by the Post Office. The

or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence." 22 U.S.C. § 611(j)

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Cite as 85 S.Ct. 1493 (1965)

Government in its brief informs us that the keeping of this list was terminated, effective March 15, 1965. Thus, under the new practice, a notice is sent and must be returned for each individual piece of mail desired. The only standing instruction which it is now possible to leave with the Post Office is *not* to deliver any "communist political

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propaganda."² And the Solicitor General advises us that the Post Office Department "intends to retain its assumption that those who do not return the card want neither the identified publication nor any similar one arriving subsequently."

No. 491 arose out of the Post Office's detention in 1963 of a copy of the Peking Review # 12 addressed to appellant, Dr. Corliss Lamont, who is engaged in the publishing and distributing of pamphlets. Lamont did not respond to the notice of detention which was sent to him but instead instituted this suit to enjoin enforcement of the statute, alleging that it infringed his rights under the First and Fifth Amendments. The Post Office thereupon notified Lamont that it considered his institution of the suit to be an expression of his desire to receive "communist political propaganda" and therefore none of his mail would be detained. Lamont amended his complaint to challenge on constitutional grounds the placement of his name on the list of those desiring to receive "communist political propaganda." The majority of the three-judge District Court nonetheless dismissed the complaint as moot, 229 F.Supp. 913, because Lamont would now receive his mail unimpeded. Insofar as the list was concerned, the majority thought that any legally significant harm to Lamont as a result of being listed was merely a speculative possibility, and so on this score the controversy was not

yet ripe for adjudication. Lamont appealed from the dismissal, and we noted probable jurisdiction. 379 U.S. 926, 85 S.Ct. 327, 13 L.Ed.2d 340.

Like Lamont, appellee Heilberg in No. 848, when his mail was detained, refused to return the reply card and

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instead filed a complaint in the District Court for an injunction against enforcement of the statute. The Post Office reacted to this complaint in the same manner as it had to Lamont's complaint, but the District Court declined to hold that Heilberg's action was thereby mooted. Instead the District Court reached the merits and unanimously held that the statute was unconstitutional under the First Amendment. 236 F.Supp. 405. The Government appealed and we noted probable jurisdiction. 379 U.S. 997, 85 S.Ct. 722, 13 L.Ed.2d 700.

There is no longer even a colorable question of mootness in these cases, for the new procedure, as described above, requires the postal authorities to send a separate notice for each item as it is received and the addressee to make a separate request for each item. Under the new system, we are told, there can be no list of persons who have manifested a desire to receive "communist political propaganda" and whose mail will therefore go through relatively unimpeded. The Government concedes that the changed procedure entirely precludes any claim of mootness and leaves for our consideration the sole question of the constitutionality of the statute.

[1, 2] We conclude that the Act as construed and applied is unconstitutional because it requires an official act (*viz.*, returning the reply card) as a limitation on the unfettered exercise of the addressees First Amendment rights. As stated

2. A Post Office regulation permits a patron to refuse delivery of any piece of mail (39 CFR § 44.1(a)) or to request in writing a withholding from delivery for a period not to exceed two years of specifi-

cally described items of certain mail, including "foreign printed matter." *Ibid.* And see Schwartz, *The Mail Must Not Go Through*, 11 U.C.L.A. L.Rev. 805, 847.

by Mr. Justice Holmes in *United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U.S. 407, 437, 41 S.Ct. 352, 363, 65 L.Ed. 704 (dissenting): "The United States may give up the post-office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues * * *."³

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We struck down in *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, a flat license tax on the exercise of First Amendment rights. A registration requirement imposed on a labor union organizer before making a speech met the same fate in *Thomas v. Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430. A municipal licensing system for those distributing literature was held invalid in *Lovell v. City of Griffin*, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949. We recently reviewed in *Harman v. Forssenius*, 380 U.S. 528, 85 S.Ct. 1177, an attempt by a State to impose a burden on the exercise of a right under the Twenty-fourth Amendment. There, a registration was required by all federal electors who did not pay the state poll tax. We stated:

"For federal elections, the poll tax is abolished absolutely as a prerequisite to voting, and no equivalent or milder substitute may be imposed. Any material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban." *Id.*, 380 U.S., p. 542, 85 S.Ct., p. 1186.

Here the Congress—expressly restrained by the First Amendment from "abridging" freedom of speech and of press—is the actor. The Act sets admin-

istrative officials astride the flow of mail to inspect it, appraise it, write the addressee about it, and await a response before dispatching the mail. Just as the licensing or taxing authorities in the Lovell, Thomas, and Murdock cases sought to control the flow of ideas to the public, so here federal agencies regulate the flow of mail. We do not have here, any more than we had in *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 66 S.Ct. 456, 90 L.Ed. 586, any question concerning the extent to which Congress may

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clas-

sify the mail and fix the charges for its carriage. Nor do we reach the question whether the standard here applied could pass constitutional muster. Nor do we deal with the right of Customs to inspect material from abroad for contraband. We rest on the narrow ground that the addressee in order to receive his mail must request in writing that it be delivered. This amounts in our judgment to an unconstitutional abridgment of the addressee's First Amendment rights. The addressee carries an affirmative obligation which we do not think the Government may impose on him. This requirement is almost certain to have a deterrent effect, especially as respects those who have sensitive positions. Their livelihood may be dependent on a security clearance. Public officials like schoolteachers who have no tenure, might think they would invite disaster if they read what the Federal Government says contains the seeds of treason. Apart from them, any addressee is likely to feel some inhibition in sending for literature which federal officials have condemned as "communist political propaganda." The regime of this Act is at war with the "uninhibited, robust, and wide-open" debate and discussion

3. "Whatever may have been the voluntary nature of the postal system in the period of its establishment, it is now the main artery through which the business, social, and personal affairs of the people are conducted and upon which depends in a

greater degree than upon any other activity of government the promotion of the general welfare." *Pike v. Walker*, 73 App.D.C. 289, 291, 121 F.2d 37, 39. And see *Gellhorn, Individual Freedom and Governmental Restraints* p. 88 et seq. (1956).

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Cite as 35 S.Ct. 1493 (1965)

that are contemplated by the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720, 11 L.Ed.2d 686.

We reverse the judgment in No. 491 and affirm that in No. 848.

It is so ordered.

Judgment in No. 491 reversed and judgment in No. 848 affirmed.

Mr. Justice WHITE took no part in the consideration or decision of these cases.

Mr. Justice BRENNAN, with whom Mr. Justice GOLDBERG joins, concurring.

These might be troublesome cases if the addressees predicated their claim for relief upon the First Amendment rights of the senders. To succeed, the addressees

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would then have to establish their standing to vindicate the senders' constitutional rights, cf. *Dombrowski v. Pfister*, 380 U.S. 479, 486, 85 S.Ct. 1116, 1120, as well as First Amendment protection for political propaganda prepared and printed abroad by or on behalf of a foreign government, cf. *Johnson v. Eisentrager*, 339 U.S. 763, 781-785, 70 S.Ct. 936, 945-947, 94 L.Ed. 1255. However, those questions are not before us, since the addressees assert First Amendment claims in their own right: they contend that the Government is powerless to interfere with the delivery of the material because the First Amendment "necessarily protects the right to receive it." *Martin v. City of Struthers*, 319 U.S. 141, 143, 63 S.Ct. 862, 863, 87 L.Ed. 1313. Since the decisions today uphold this contention, I join the Court's opinion.

It is true that the First Amendment contains no specific guarantee of access to publications. However, the protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful. See, e. g., *Bolling v. Sharpe*, 347

U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884; *NAACP v. State of Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488; *Kent v. Dulles*, 357 U.S. 116, 78 S.Ct. 1113, 2 L.Ed.2d 1204; *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992. I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.

Even if we were to accept the characterization of this statute as a regulation not intended to control the content of speech, but only incidentally limiting its unfettered exercise, see *Zemel v. Rusk*, 381 U.S. 1, 16-17, 85 S.Ct. 1271, 1280-1281, we "have consistently held that only a compelling [governmental] interest in the regulation of a subject within [governmental] constitutional power to regulate can justify limiting

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First

Amendment freedoms." *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 341, 9 L.Ed.2d 405. The Government's brief expressly disavows any support for this statute "in large public interests such as would be needed to justify a true restriction upon freedom of expression or inquiry." Rather the Government argues that, since an addressee taking the trouble to return the card can receive the publication named in it, only inconvenience and not an abridgment is involved. But inhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government. See, e. g., *Freedman v. State of Maryland*, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649; *Garrison v. State of Louisiana*, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125; *Speiser v. Randall*, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460. The registration requirement which was struck down in *Thomas v. Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430, was not appreciably more burdensome. Moreover, the ad-

dresser's failure to return this form results in nondelivery not only of the particular publication but also of all similar publications or material. Thus, although the addressee may be content not to receive the particular publication, and hence does not return the card, the consequence is a denial of access to like publications which he may desire to receive. In any event, we cannot sustain an intrusion on First Amendment rights on the ground that the intrusion is only a minor one. As the Court said in *Boyd v. United States*, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed. 746:

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance.

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It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

The Government asserts that Congress enacted the statute in the awareness that Communist political propaganda mailed to addressees in the United States on behalf of foreign governments was often offensive to the recipients and constituted a subsidy to the very governments which bar the dissemination of publications from the United States. But the sensibilities of the unwilling recipient are fully safeguarded by 39 CFR § 44.1(a) (Supp. 1965) under which the Post Office will honor his request to stop delivery; the statute under consideration, on the other hand, impedes delivery even

to a willing addressee. In the area of First Amendment freedoms, government has the duty to confine itself to the least intrusive regulations which are adequate for the purpose. Cf. *Butler v. State of Michigan*, 352 U.S. 380, 77 S.Ct. 524, 1 L.Ed.2d 412. The argument that the statute is justified by the object of avoiding the subsidization of propaganda of foreign governments which bar American propaganda needs little comment. If the Government wishes to withdraw a subsidy or a privilege, it must do so by means and on terms which do not endanger First Amendment rights. Cf. *Speiser v. Randall*, *supra*. That the governments which originate this propaganda themselves have no equivalent guarantees only highlights the cherished values of our constitutional framework; it can never justify emulating the practice of restrictive régimes in the name of expediency.

Mr. Justice HARLAN concurs in the judgment of the Court on the grounds set forth in this concurring opinion.



381 U.S. 357

The ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION.

The GOODYEAR TIRE & RUBBER COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION.

Nos. 292, 296.

Argued March 30, 1965.

Decided June 1, 1965.

Rehearing Denied Oct. 11, 1965.

See 86 S.Ct. 18.

Proceedings on complaint charging violation of Federal Trade Commission Act by tire manufacturer and gasoline

EXHIBIT 26

SAC, San Francisco

1-18-66

Director, FBI

~~CONFIDENTIAL SOURCE~~

~~SAN FRANCISCO FILE~~

~~CONFIDENTIAL SOURCE~~

~~SAN FRANCISCO FILE~~

ReSFlet 1-5-CS.

Promptly submit separate justification letters in accordance with established procedures concerning and

LLA:wlg
(6)

NOTE: Above-mentioned sources furnish information concerning communications from U.S. destined for and as well as data concerning contacts between persons in and persons in the U.S. These sources were instituted 7-14-65 under our current program. They were temporarily discontinued 12-7-65 due to rush of holiday season and re-established 1-3-66. Justification letters are due concerning these sources.

DUPLICATE YELLOW

EXHIBIT 27

EDS ONLY

17 May 1958

MEMORANDUM FOR: Director of Security

SUBJECT: SRPOINTER

1. At 1600 this date the Director and the undersigned visited Mr. Summerfield, the Postmaster General, in his office for the purpose of discussing SRPOINTER along the lines outlined by you in several memoranda which you prepared for the Director. Also present at the conference were the Deputy Postmaster General, Iden M⁷ Postal Inspector, and Iden H⁶, of the Post Office Department.

2. Two separate matters were discussed during this conference: (a) SRPOINTER and (b) the handling of third-class Communist propaganda material entering the United States. As regards SRPOINTER, the Director told the group how valuable we had found efforts in this field. He then went on to say that we would like to photograph the backs and fronts of first-class mail from the Soviet and satellite areas. He also said that we wanted very much to be able to review first-class correspondence of this same sort directed to Latin America, particularly Guatemala, Costa Rica, Honduras, Brazil, and Argentina. (When he had finished his exposition, the Postmaster General did not comment specifically but it was clear that he was in favor of giving us any assistance which he could in both of these matters. When the conference broke up, I spoke to Iden M⁷ privately and asked him if he now had all the authorization he felt he needed. He replied in the affirmative.) He told me that he was going to New York in the next day or so and would speak to the matter personally, after which he would get in touch with us. I told him that we would backstop this in that Iden M⁷ would call within a few days to find out how things had gone. Iden M⁷ said that his main problem in New York with the Latin American mail is one of manpower. He does not know how the Post Office Department will come out on appropriations and he foresees some difficulty in handling the additional volume which the Latin American material will add. I told him we would help out in any way we could but he indicated that he did not feel that there was much more we could do than we are already doing at least as far as his part of the problem is concerned. If any difficulties are apparent after Iden M⁷ has next seen Iden H⁶, I would appreciate knowing it, but I got the impression that henceforth the problem is one of mechanics rather than of policy or authorization. Incidentally, the Director did not mention using material of internal security interest to the FBI largely because

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Iden 47 indicated on two occasions that the Post Office Department was doing a lot of work for the Bureau, particularly in Washington, and it did not seem pertinent to raise this particular issue at this conference. It is a matter which we can review at some later date in terms of our own requirement for keeping the FBI informed.

3. The problem of handling third-class Communist propaganda material absorbed a large proportion of the 45-minute meeting. Iden 16, who apparently deals with this matter, was much interested in what he could do to engage his staff of translators, lawyers, and stenographers to handle the review of this material. After explaining how the Post Office Department handles the matter at the present time, he pointed out that he needed this additional manpower in order to keep from falling far behind on the job. The Director offered to put him in touch with the Foreign Documents Branch of CIA with the thought that they might be able to help Iden 16 find competent translators to the number of four or five. The Director stated that he would handle this topic direct with Iden 16 and Iden 2. The Director has in the back of his mind a desire to put a CIA person into this unit for the benefits which might accrue to this in learning the type of propaganda which is flooding into this country. How he intends to pursue this particular aspect remains to be seen. He spoke to the Postmaster General about the possibility of helping him out financially on these translators, and the conference ended with the statement by the Postmaster General that they would examine the problem first, then decide who was going to pay for it. Iden 46 told the Director that he would send him on a regular basis samples of the propaganda material which comes to their attention. It is clear that the Post Office Department desires to handle this problem by destroying non-mailable material as it has in the past but is anxious to be more careful in discriminating between types of material so that the Department is not opened up to criticism for wholesale destruction.

R/K
Richard Helms
Chief of Operations, DD/P

cc: Iden 17

APPENDIX

(202) 785-0200

J. EDWARD DAY21 DUPONT CIRCLE
WASHINGTON, D.C. 20036

October 24, 1975

Dear Mr. Schwarz:

In connection with my testimony before the Commission on Wednesday, please include in the record as a supplement to my comments following the Chairman's extended statement toward the end in which he cited various court cases including an 1878 U. S. Supreme Court decision:

"If the CIA lawyers concluded that the CIA could not open mail to and from Communist countries in the early 1960's without violating the law, I think the CIA needs better lawyers.

"One can't answer such a unique legal question merely by reading from various postal statutes and citing court decisions from the 19th century, which did not involve spying, cold war or subversive activities. A less simplistic approach to the problem is required.

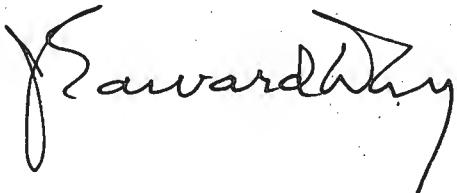
"For example, statutes clearly say it is a crime to kill or attempt to kill someone with premeditation. These statutes, and others making felonies of arson, kidnapping, etc., do not say 'except in time of war.' But we all know that exception is read into these laws (even if the killing or arson was in a 'war' of doubtful legality ordered by Lyndon Johnson and Richard Nixon).

"In my opinion, the statutes relating to opening of mail must similarly have read into them an exception for opening mail

F. A. O. Schwarz, Jr.
Page 2

to and from Communist countries by the
CIA in time of cold war."

Very truly yours,



Mr. F. A. O. Schwarz, Jr.
Chief Counsel
Senate Committee on Intelligence
Dirksen Senate Office Building
Washington, D. C.

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